Calendar No. 838

100TH CONGRESS
2d Session

SENATE

REPORT
100-430

MINIMUM WAGE RESTORATION ACT OF 1988

JULY 26, 1988.—Ordered to be printed

Mr. KENNEDY, from the Committee on Labor and Human Resources, submitted the following

REPORT

together with

ADDITIONAL, MINORITY, AND SUPPLEMENTAL VIEWS

[To accompany S. 837]

The Committee on Labor and Human Resources, to which was referred the bill (S. 837), having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends the bill as amended by the substitute do pass.

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19-010

S543-12

I. THE BILL AS REPORTED

A BILL To amend the Fair Labor Standards Act of 1938 to restore the minimum wage to a fair and equitable rate, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~SECTION 1. SHORT TITLE.~~

~~This Act may be cited as the "Minimum Wage Restoration Act of 1987".~~

~~SEC. 2. RESTORATION OF MINIMUM WAGE.~~

~~(a) INCREASE.—Subsection (a)(1) of section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) is amended to read as follows:~~

~~"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1987, not less than $3.85 an hour during the year beginning January 1, 1988, not less than $4.25 an hour during the year beginning January 1, 1989, not less than $4.65 an hour during the year beginning January 1, 1990, and after December 31, 1990, not less than the minimum wage rate determined in accordance with subsection (b);".~~

~~(b) INDEX.—Subsection (b) of such section is amended to read as follows:~~

~~"(b) Effective January 1, 1991, and January 1, of each succeeding year, the minimum wage rate in effect under subsection (a)(1) shall be revised so that the rate is equal to 50 percent of the average private, nonsupervisory, nonagricultural hourly wage as determined by the Bureau of Labor Statistics of the Department of Labor for the previous November, rounded to the nearest multiple of 5 cents.".~~

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minimum Wage Restoration Act of 1988".

SEC. 2. RESTORATION OF MINIMUM WAGE.

Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, not less than $4.55 an hour after December 31, 1990;".

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Effective January 1, 1989, paragraph (2) of section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(2)) is amended to read as follows:

"(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);".

(b) PRESERVATION OF COVERAGE.—The next to last sentence of section 3(s) of such Act is amended—

(1) by striking out "June 30, 1978" and inserting in lieu thereof "December 31, 1988";

(2) by striking out "Fair Labor Standards Amendments of 1977" and inserting in lieu thereof "Minimum Wage Restoration Act of 1988"; and

(3) by striking out "$250,000" and inserting in lieu thereof "$362,500".

SEC. 4. PUERTO RICO AND THE VIRGIN ISLANDS.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 of the Fair Labor Standards Act of 1938 (29 U.S.C. 205) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

"(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

"(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

"(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico."; and

(2) in the first sentence of subsection (e), by striking out "in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands" and inserting in lieu thereof "in Puerto Rico (1) by the United States".

(b) MINIMUM WAGE.—Section 6 of such Act (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) by striking out "and the Virgin Islands"; and

(B) by striking out "or the Virgin Islands"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exemptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

"(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.".

(c) WAGE ORDERS.—Section 8 of such Act (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "and the Virgin Islands";

(2) in the second sentence of subsection (a), by striking out "committee—" and all that follows through the period at the end of the sentence and inserting in lieu thereof the following

"committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).";

(3) in the third sentence of subsection (a), by striking out "or the Virgin Islands, or in Puerto Rico and the Virgin Islands,"; and

(4) in the third sentence of subsection (b)—

(A) by striking out "or in the Virgin Islands"; and

(B) by striking out "and the Virgin Islands".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 214(b) of such Act (29 U.S.C. 214(b)) is amended by striking out "or the Virgin Islands" each place it appears in paragraphs (1)(A), (2), and (3).

II. SUMMARY OF THE BILL

S. 837, the Minimum Wage Restoration Act of 1988, amends the Fair Labor Standards Act of 1938 by adjusting the federal minimum wage provided in section 6(a)(1) of the FLSA from the current level of $3.35 an hour to $4.55 an hour, in three annual steps of 40 cents. Beginning on January 1, 1989, the minimum wage will be $3.75 an hour. Beginning on January 1, 1990, the minimum wage will be $4.15 and hour, and on January 1, 1991, it will be $4.55 an hour.

Also adjusted is the retail or service enterprise test provided in section 3(s)(2) of the FLSA, from the current level of $362,500 in annual gross sales to $500,000. Employees of retail or service establishments whose annual gross sales are between the current $362,500 the $500,000 would continue to be entitled to receive at least $3.35 an hour, even though their employer falls into this expanded exempt category.

The new rates are applicable to Puerto Rico and the Virgin Islands. This is a change from the existing law providing for these rates to be established by special industry committees.

However, in the case of Puerto Rico, if it is determined that significant and substantial differences exist between mainland and island wage structures in and industry, there is reasonable cause to believe the new rate would substantially curtail employment, and notice has been given to all interested parties in Puerto Rico, the Puerto Rican Minimum Wage Board may petition the Secretary of Labor for the establishment of an industry committee to determine the appropriate minimum wage in that industry.

If the Secretary concludes the above criteria are met, the Secretary shall appoint such an industry committee in accordance with the existing provisions of the FLSA.

References to the Virgin Islands in these industry committee provisions are deleted to conform the FLSA with these new provisions regarding the applicable rates in Puerto Rico and the Virgin Islands.

III. Background and Need for Legislation

A. BACKGROUND

This June 25th marked the 50th anniversary of the passage of the Fair Labor Standards Act of 1938. At the beginning of the legislative debate on this uniform federal labor standards bill, President Roosevelt stated:

> Our nation so richly endowed with natural resources and with a capable and industrious population should be able to devise ways and means of insuring to all our able-body working men and women a fair day's pay for a fair day's work. A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason of chiseling workers' wages or stretching workers' hours.

A year, a month and a day later when President Roosevelt signed the Fair Labor Standards Act into law, the President observed: "Except for the Social Security Act, it is the most far-reaching, far-sighted program ever adopted here or in any country."

This public policy of a level below which wages could not fall was, and still is, intended to enable a full-time worker to maintain a minimum living standard without either Government assistance or the deprivation of basic necessities.

During original consideration of the FLSA and during the debate on subsequent amendments to expand coverage and to adjust the wage levels to account for inflation, business opponents have stridently claimed immediate and significant adverse employment consequences flowing from the establishment and maintenance of this public policy.

Yet Congress has repeatedly reaffirmed the national commitment to a minimum wage which is a living wage, and the opposition predictions of significant adverse employment consequences did not come to pass. An historic review of the legislative history of the major amendments of the FLSA and the accompanying employment impact might help put current predictions of significant adverse employment consequences in perspective.

1949 amendments

Congress raised the minimum wage from 40 cents to 75 cents an hour in 1949, an 87.5% increase. During the deliberation of the amendments, business organizations consistently warned of significant increases in unemployment and inflation as a result of the legislation.

Yet overall unemployment decreased from 5.9% in 1949 to 5.3% in 1950, youth unemployment fell from 13.4% to 12.2%, and total employment rose more than the prior year when there was no increase in the wage.

1955 amendments

Congress raised the wage to $1.00 an hour, a 33% increase. Again Congress heard stern predictions from business groups of the certain unemployment and inflation which would follow as a consequence of the increase. The U.S. Chamber of Commerce warned in

testimony to the Committee: "Low paid workers who are covered by the law will have been barred from jobs by members of Congress."

Yet overall unemployment fell from 4.4% to 4.1%, youth unemployment slightly increased from 11.0% to 11.1%, and total employment increased more in 1956 than in the prior two years in which there had been no increase.

1961 amendments

Congress increased the minimum wage to $1.15, and to $1.25 in 1963, and expanded coverage to retail and service establishments. Again during consideration of the legislation, business opponents predicted significant impact on unemployment and inflation. In testimony before this Committee, the U.S. Chamber of Commerce stated: "Many retail and service employers have already predicted layoffs * * * if brought under coverage of the $1.25 law." The Chamber went on to assert: "Whatever good might result from minimum wage legislation would be far outweighed by the unemployment and inflation the legislation would provoke".

Yet retail and service employment, which had increased 1.2% between 1960 and 1961 when not covered by the FLSA, jumped 3.3% between 1961 and 1962. Overall unemployment fell from 6.7% to 5.5%, youth unemployment fell from 16.8% to 14.7%, and overall employment increased six times as much as in the prior year when there had been no increase. Inflation increased at a lower rate in the year after the increase in the minimum wage took effect than in the year prior to the increase.

1966 amendments

Congress increased the minimum wage from $1.25 to $1.40 in 1967, to $1.60 in 1968, and expanded the coverage of the FLSA. Once again this Committee received testimony from a variety of business organizations predicting significant adverse employment and inflationary impact. Yet unemployment fell from 3.8% in 1966 to 3.6% in 1968, youth unemployment fell from 12.8% to 12.7% for the same time period, employment increased by over 3 million workers, and labor market participation rates hit a post-war high in 1969.

The increase which took effect in 1968 raised the minimum wage to 55.8% of the average hourly earnings, the highest relative level of the minimum wage. Yet careful study of its impact on employment led Secretary of Labor George Shultz to report to Congress in 1970:

> There was continued economic growth during the period covering the third phase of the minimum wage and maximum hours standards established by the FLSA Amendments of 1966. Total employment on non-agricultural payrolls (seasonally adjusted) rose in 28 out of 32 consecutive months between January 1967 and September 1969. In the most recent 12-month period, employment climbed 3.2% * * * between September 1968 and September 1969. Employment rose in all major nonagricultural industry divisions during the 12 month period between September 1968

> and September 1969. In retail, services and state and local government sector—where the minimum wage had its greatest impact in 1969, since only the newly covered workers were slated for Federal minimum wage increases—employment rose substantially.

The report to Congress of Secretary of Labor Hodgson the following year confirmed Secretary Shultz's analysis:

> In view of the overall economic trends, it is doubtful whether changes in the minimum had any substantial impact on wage, price, or employment trends. Of much greater significance, however, is the fact that the 15 cent boost did help two million workers recover some of the purchasing power eroded by the steady upward movement of prices which had started even before the enactment of the 1966 amendments.

1974 amendments

Congress increased the minimum to $2.00 in May of 1974, $2.10 in 1975, and $2.30 in 1976. In hearings before this Committee prior to passage of the increase, again businesses testified to the adverse employment impact of the proposal. One witness for the American Retail Federation testified that they would be forced to implement "alternatives", including; "Obviously to reduce the number of employees. The first ones to go would have to be marginal employees we in many cases are carrying now. We would also have to suggest retirement to employees who are no longer productive but who we are currently carrying".

Yet even during the 1975 recession during which unemployment rose from 5.5% in 1974 to 7.6% in 1976 and youth unemployment increased from 16% to 19%, retail employment increased by 655,000 jobs, a 5.2% increase.

1977 amendments

Congress increased the minimum wage in four steps, to $2.65 in 1978, $2.90 in 1979, $3.10 in 1980, and to the current $3.35 in 1981. This Committee again received testimony from business organizations predicting significant job loss stemming from passage of the amendments. The U.S. Chamber of Commerce testified that the proposed minimum wage increase would result in about 2 million lost jobs. They offered as evidence a study providing a state-by-state breakdown of the lost jobs totalling 1,977,000 by 1980, if the minimum wage reached $3.15 an hour (the bill which passed reached $3.10 by 1980). The Chamber witness stated: "Rather than help a person who is now making $2.30 by raising the minimum wage to $2.65 or $3.00, you are hurting him because you put him out of work. So the minimum wage may be $3.00, but his wage is zero unless he can collect welfare, because his job is eliminated."

The Chamber testimony also calculated a first year job loss of 400,000, 387,000 of which would be teen-age jobs. Minority teen-age unemployment would increase almost 6% to 45% with a $2.65 minimum the first year.

One retailer testified that 5,800 of 29,000 convenience stores would have to close if the minimum wage increase became law. He concluded: "The minimum wage increases contemplated by S. 1871 could sound the death knell for a large number of convenience food stores. It could force mass lay-offs and could cause some companies to completely go out of business."

Yet the following table demonstrated what the actual employment impact was:

Year	Impact minimum wage	Percent			Total employed [1] (thousands)
		Increase	Unemployed	Youth unemployed	
1977	$2.30	0	7.1	17.8	88,734
1978	2.65	15	6.1	16.4	92,661
1979	2.90	9.4	5.8	16.1	95,477
1980	3.10	6.9	7.1	17.8	95,938
1981	3.35	8.1	7.6	19.6	97,030
1982	3.35	0	9.7	23.2	96,125

[1] Civilian, nonagricultural industries.

As the table indicates, total employment increased 8,296,000 1977–1981. The only decline in employment occurred in 1982, a year in which there was no increase in the minimum wage. Employment increased 3,313,000 in 1977, also a year in which there was no increase, and it increased 3,927,000 in 1978, the year a 15% increase of the minimum wage went into effect. Teen employment increased 382,000 in 1978, as compared to an increase of 352,000 in 1977 when there was no increase in the minimum wage. Minority teen unemployment declined 1.8% in 1978 when the minimum wage reached $2.65, instead of the almost 6% increase projected by the U.S. Chamber of Commerce testimony in 1977.

Contrary to the testimony projecting 5,800 of the 29,000 convenience stores closing if the minimum wage were increased, the number of convenience stores increased by 4,100 between 1977 and 1978, as compared to an increase of 2,000 between 1976 and 1977, when there was no increase in the minimum wage.

Retail employment also increased by 1,381,000 1977–1981. The only decline in retail employment was in 1982, a year in which there was no increase in the minimum wage. Retail employment increased in 1977 by 599,000, when there was no increase in the minimum wage, and by 765,000 in 1978, the year a 15% increase was in effect.

The 1977 amendments also created the Minimum Wage Study Commission to examine the impact of the FLSA. In the May 24, 1981 letter to the President and Congress accompanying the Commission's recommendations, the Commission Chairman termed the research "the most exhaustive inquiry ever undertaken into the issues surrounding the Act since its inception."

The Chairman of the Minimum Wage Study Commission concluded in the seven volume report:

> The evidence suggests that recent changes in the Fair Labor Standards Act have had relatively little impact on national unemployment levels and that the achievement of substantial decreases in unemployment (if they are achiev-

able at all through amendment of the Fair Labor Standard Act) could be obtained only at the cost of a very large subsidy of employers in the fast food, retail and other low-wage industries by low-wage workers, or tax payers, or both . . .

The purpose of the Fair Labor Standards Act was and is to establish a floor below which wages will not fall, a floor which is adequate to support life and a measure of human dignity. It is a laudable legislative effort to ensure a just wage in returned for a day's labor . . .

That the minimum wage has not brought us to the Earthly Paradise may be a disappointment, but it should not be a surprise. That it has provided a working floor below which wages would have gone in its absence and have not gone because of it, suggests that it has done what it was intended to do. May that be said of each of us.

1987 testimony

The Committee again received testimony and accompanying studies projecting significant adverse employment impact under S. 837. One study submitted by the U.S. Chamber of Commerce calculated 1.9 million jobs would be lost by 1995 under S. 837 as originally introduced. This study concluded that through the first 3 years ($4.65) there would be a 550,000 decline in employment, 113,000 to 339,300 of which would be teen jobs, and a .4% increase in the unemployment rate.

Another Chamber of Commerce study received by the Committee concluded that through the same three years of the bill ($4.65, total job loss would exceed 750,000, 420,000 of which would be teen jobs.

Another witness presented the conclusions of a study commissioned by the Retail Industry Task Force, which calculated that at a minimum wage of $4.65 "882,000 people would lose their jobs, 364,000 from the retail industry."

Conclusion

These projections of job loss are consistent with the previous projections by business organizations and economists in opposition to previous amendments to the Fair Labor Standards Act. Yet it is apparent from the employment and unemployment data following previous adjustment to the FLSA rate that the adverse employment consequences projected by these and other economic studies have never come to pass.

It is not surprising that the historic data on employment and unemployment do not support conclusions by economists plugging data into a model or a formula. Wage markets do not behave the same as commodity markets vis-a-vis the economists' stock in trade, supply and demand curves. As Dr. Adams testified before this Committee:

> We visualize the labor market as one that is highly fragmented, not like the market for wheat and corn and potatoes, but rather, it is an individual relationship between workers with very specific qualifications and their employer. And in such a fragmented labor market, certain work-

> ers fall behind, lack bargaining power, lack information and are unable to achieve a market wage.

Similarly, it would not surprise the original drafters of the FLSA that wage markets behave differently than commodities markets. The fundamental premise of those who authored the FLSA was that labor is *not* a commodity, and as a matter of public policy, should not be treated as such.

The differences between economic and business projections of adverse consequences and the subsequent actual employment data may have been best explained by Dr. Walter Galenson, in his testimony before this Committee in 1977:

> Economists are prone to make strong policy statements on the minimum wage, and one would have supposed that by this time, they would have had a firm supporting factual foundation. This is unfortunately not the case. . . One of the difficulties with most of these studies is that they are based upon macroeconomic data, and that heroic assumptions are necessary in order to distill out the effects of economic developments that are occurring simultaneously. . . The problem with arguments on both sides of the issue is that the major forces that determine the level of employment swamp any and probably minor effects that might be attributed solely to a change in the minimum.

Dr. Galenson's observations were supported in the hearings this Congress by Dr. Gerard Adams, who testified:

> I conclude by saying that our econometric estimates suggest that at worst, adjustment of the minimum wage to $4.65 an hour and indexing thereafter will have small effects on the GNP and employment and only moderate effects, up to .2% annually, on inflation. These are tiny imperceptable differences, and they will be overwhelmed by small changes in any number of more important variables that affect our economy. . .
>
> A ten cent increase in the price of gasoline will give you two-tenths of one percent on the inflation rate if you carry it through the model.
>
> A $10 billion change or reduction in government spending—$10 billion is not a large number—would give you approximately the same impact on unemployment as we get here.

B. NEED FOR THE LEGISLATION

The minimum wage was last adjusted by Congress in 1977, with the current $3.35 an hour taking effect on January 1, 1981. In the ensuing seven and one-half years, the purchasing power of the minimum wage has declined almost 30%. The $3.35 an hour in effect in 1981 is only worth $2.60 an hour in today's dollars. The minimum wage today represents 36% of the average hourly earnings, a decline from 46.2% in 1981, and from 55.4% in 1968. The original 25 cents an hour passed in 1938 represented a greater percentage of average hourly earnings than does $3.35 today.

In over one-half the states, basic welfare benefits provide greater cash income than does full time work at the current minimum wage. Opponents of the minimum wage point out that many minimum wage workers are not poor. The sad reality is that many of the poor cannot afford to work at the current minimum wage when not working can better enable these families to survive.

According to recent Current Population Survey data provided to the Committee by the Department of Labor, in 1987 there were over 15 million hourly workers earning less than $4.55 an hour. While women make up about 45% of the labor force, they constitute over 63% of those earning less than $4.55 an hour. Blacks and Hispanics also constitute significantly higher percentages of these low wage workers than they do of the workforce in general. Contrary to the assertions that most of these workers are just teens, only 26% of those earning less than $4.55 are teen-agers. Of hourly workers 65 years of age and older, 39.5% earn less than $4.55 an hour.

Over 6.5 million of these low-wage workers are full time. Over 3.8 million are heads of households, and over 2.1 million of these are working full time heads of households. Of hourly workers within all families earning below the poverty level for a family of three, over 2.6 million earn less than $4.55 an hour, or 63% of all hourly workers in this category. Of hourly wage earners from families of three below the poverty line, over 70% earn less than $4.55 an hour.

Raising the minimum wage to $4.55 will provide a cash infusion to these millions of workers without expanding federal outlays. It will restore the minimum wage, badly eroded over the last seven years, much closer to the levels maintained over the last 50 years. By increasing the minimum to this level, work in many states will be a more attractive alternative than welfare benefits.

For the working poor, this adjustment to the minimum wage is long overdue and wil prove to be an enormous benefit. For those non-poverty workers laboring at the minimum wage, the increase will also prove to be a significant benefit. For example, teens and young adults attempting to meet college expenses have witnessed a 73% increase in private college tuition and a 61% increase in public college tuition since the minimum was last adjusted in 1981. Seventy percent of middle-income students depend on their earnings for college expenses, and since 1981, students have had to increase their borrowing by over 40%.

Despite the assertion by President Reagan that "The minimum wage has caused more misery and unemployment than anything since the Great Depression", the historic data contradicts such notions. Restoration of the minimum wage by enactment of S. 837 will in fact increase the earnings and reduce the misery of millions of American workers, with no discernible adverse impact on our economy.

C. STATISTICAL TABLES

Past Committee reports accompanying legislation to increase the minimum wage have included statistical tables provided by the Bureau of Labor Statistics and the Employment Standards Admin-

istration at the Department of Labor, which have proven to be useful references during previous deliberation and consideration of such legislation. The following tables have been provided by the Secretary of Labor, and the Committee extends its thanks to the Secretary for her cooperation and assistance.

TABLE 1.—ESTIMATED NUMBER OF EMPLOYED WAGE AND SALARY WORKERS IN THE CIVILIAN LABOR FORCE, CLASSIFIED BY THEIR STATUS UNDER THE MINIMUM WAGE PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY INDUSTRY, UNITED STATES, SEPTEMBER 1987

[In thousands]

Industry division	Number of employed wage and salary workers in the civilian labor force							Number of nonsupervisory employees not subject to the minimum wage provisions of the FLSA
	Total	Activities generally exempt under section 13(a)(1) of FLSA [1]		Number of nonsupervisory employees subject to the minimum wage provisions of the FLSA	Total	Subject prior to the 1966 amendment [2]	Subject as a result of the 1966 and later amendments	
		Executive, administrative, and professional personnel	Outside sales workers					
All industries	106,963	20,077	2,766	84,120	76,023	48,405	27,618	10,863
Private sector	89,486	13,096	2,766	73,624	65,527	48,405	17,122	10,863
Agriculture [3]	1,761	91	.....	1,670	642	.....	642	1,028
Mining	760	96	.....	664	660	660	.....	4
Contract construction	5,303	532	5	4,766	4,749	3,981	768	22
Manufacturing	19,348	2,255	392	16,701	16,620	16,518	102	473
Transportation and public utilities	5,466	622	7	4,837	4,813	4,737	76	31
Wholesale trade	5,837	830	990	4,017	3,993	3,744	249	1,014
Retail trade	18,406	1,840	167	16,399	14,254	7,249	7,005	2,312
Finance, insurance, and real estate	6,645	962	1,156	4,527	4,309	4,140	169	1,374
Service industries (except private households) [4]	24,564	5,868	49	18,647	14,564	7,376	7,188	4,132
Private households	1,396	.....	.....	1,396	923	.....	923	473
Public sector	17,477	6,981	.....	10,496	10,496	.....	10,496	.....
Federal Government	2,941	552	.....	2,389	2,389	.....	2,389	.....
State and local government [4]	14,536	6,429	.....	8,107	[5] 8,107	.....	8,107	.....

[1] Section 13(a)(1) exempts from the minimum wage and overtime provisions of the Fair Labor Standards Act ". . . any employee employed in a bona fide executive, administrative, or professional capacity (including any employee in the capacity of academic administrative, personnel, or teacher in elementary or secondary schools), or in the capacity of outside salesman . . ." included are all employees in the specific activities whether employed in covered or noncovered establishments.

[2] Relates to currently employed workers who would have been subject under criteria in effect prior to the 1966 amendments.

[3] Estimates for agriculture are based on average employment for the 10-month active season. For July 1987, a peak employment period, the estimate for total hired farm labor was 2,151,000; for nonsupervisory employment, 2,045,000; for subject employment, 770,000.

[4] Estimates for educational services relate to October 1987.

[5] Estimated employment subject to the minimum wage reflects the February 1985 Supreme Court decision in Garcia.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 21, 1988.

TABLE 2.—DETAILED ESTIMATES OF THE NUMBER OF WORKERS EXEMPT FROM BOTH THE MINIMUM WAGE AND OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY SECTION OF THE ACT PROVIDING THE EXEMPTION, SEPTEMBER 1987

[In thousands]

Section of the act		Estimate[1]
	Exempt from minimum wage and overtime	7,859
6(f) and 7(1)	Domestic service employees working 8 hours or less or with earnings too low to be covered by social security.	277
13(a)(1)	Outside selesworkers	2,766
13(a)(2)	Retail and service establishments	3,451
13(a)(3)	Seasonal amusement establishments	77
13(a)(4)	Custom manufacturing in exempt retail establishments	8
13(a)(5)	Catching and processing fish and seafood	16
13(a)(6)	Agriculture	1,045
13(a)(7)	Employees exempt under section 14	NA
13(a)(8)	Small newspapers	23
13(a)(10)	Switchboard operators of small telephone exchanges	(2)
13(a)(12)	Seamen on foreign vessels	NA
13(a)(15)	Babysitters employed on a casual basis and companionship services	196

[1] Estimated number of nonsupervisory employees in categories in which exemption applies.
[2] Less than 5,000 employees.

Note.—Sections 13(a) (9), (11), (13) and (14) have been repealed.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 21, 1988.

TABLE 3.—*Number of workers not subject to the minimum wage provisions of the Fair Labor Standards Act, by industry, September 1987*

[In thousands]

All industries	[1] 10,863
Private sector	10,863
Agriculture	1,028
Mining	4
Contract construction	22
Manufacturing	473
Transportation and public utilities	31
Wholesale trade	1,014
Retail trade	2,312
Finance, insurance, and real estate	1,374
Service industries (except private households)	4,132
Private households	473
Public sector	
Federal Government	
State and local governments	

[1] Including 2,766,000 outside salesworkers.

Source: U.S. Department of Labor, Employment Standards Administrtion, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 21, 1988.

TABLE 4.—NUMBER OF WORKERS NOT SUBJECT TO THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY INDUSTRY, SEPTEMBER 1987

[In thousands]

	Total	Partial exemption [1]	Full exemption or not covered [2]
All industries	16,032	1,072	14,960

TABLE 4.—NUMBER OF WORKERS NOT SUBJECT TO THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY INDUSTRY, SEPTEMBER 1987—Continued

[In thousands]

	Total	Partial exemption [1]	Full exemption or not covered [2]
Private sector	15,089	169	14,920
Agriculture	1,670	.....	1,670
Mining	10	.....	10
Contract construction	66	.....	66
Manufacturing	692	34	658
Transportation and public utilities	1,724	29	1,695
Wholesale trade	1,221	36	1,185
Retail trade	3,493	20	3,473
Finance, insurance and real estate	1,375	.....	1,375
Service industries (except private households)	4,277	50	4,222
Private households	566	.....	566
Public sector	943	903	40
Federal Government	59	59	.....
State and local government	884	844	40

[1] Includes workers who are exempt from premium payment for overtime for part of the year or whose workweek standard exceeds 40 hours per week.

[2] Includes workers who are not covered or are exempt from overtime for the entire year. Includes 2,766,000 outside salesworkers.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 21, 1988.

TABLE 5.—DETAILED ESTIMATES OF THE NUMBER OF WORKERS PARTIALLY EXEMPT FROM THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY THE SECTION OF THE ACT PROVIDING THE EXEMPTION, SEPTEMBER 1987

[In thousands]

Section of the act		Estimate [1]
	Partial overtime exemption	1,072
7(b)(3)	Independent bulk petroleum dealers [2]	36
7(k)	Federal, State, and local fire protection and law enforcement activities (including security personnel in correctional institutions) [3]	903
7(m)	Tobacco handling and processing incidental to auction sale [4]	23
13(b)(29)	Private sector amusement or recreational establishments located in national parks, national forests or National Wildlife Refuge System [5]	20
13(h)	Cotton and sugar service employees [4]	25
13(i)	Cotton ginning [4]	48
13(j)	Processing sugar beets, sugar beet molasses or sugar cane [4]	17

[1] Estimated number of nonsupervisory employees in categories in which exemption applies.

[2] At least 1½ times the minimum rate for hours in excess of 40 per week and 1½ times the regular rate for hours in excess of 12 per day or 56 per week.

[3] 28-day work period with a least 1½ times the regular rate for hours in excess of 212 for fire protection activities and 171 for law enforcement activities.

[4] At least 1½ times the regular rate for hours in excess of 10 per day and 48 per week for a period of not more than 14 weeks.

[5] At least 1½ times the regular rate for hours in excess of 56 per week. Estimate excludes nongovernment employees providing services and facilities directly related to skiing who are exempt from the minimum wage requirements of the Fair Labor Standards Act.

Note.—Sections 13(b) (25) and (26) have been repeated. Due to the nature of the exemptions, sections 7(j) and 7(o) were not included. Section 7(j), which applies to hospitals and nursing homes, permits a 14-day work period with at least 1½ times the regular rate for hours in excess of 8 per day and 80 per the 14-day work period. Section 7(o), which applies to State and local governments, permits the use of compensatory time off in lieu of overtime at a rate of not less than 1½ hours for each hour for which overtime compensation is due.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 21, 1988.

TABLE 6.—DETAILED ESTIMATES OF THE NUMBER OF WORKERS FULLY EXEMPT FROM THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY THE SECTIONS OF THE ACT PROVIDING THE EXEMPTION, SEPTEMBER 1987

[In thousands]

Section of the act		Estimate [1]
	Fully exempt from overtime only	4,100
7(i)	Commission salesworkers in retail or service establishments	542
7(n)	Charter activities of local transit employees	NA
13(b)(1)	Motor carriers	1,152
13(b)(2)	Railroads	298
13(b)(3)	Air transportation	424
13(b)(5)	Outside buyers of poultry, eggs, cream, or milk	(2)
13(b)(6)	Seamen	62
13(b)(9)	Announcers, news editors, chief engineers of small radio or television stations	25
13(b)(10)	Salesworkers, partsworkers, mechanics	641
13(b)(11)	Drivers and drivers' helpers paid on trip basis	(2)
13(b)(12)	Agriculture or irrigation	657
13(b)(13)	Farmworkers engaged in livestock auction operations	NA
13(b)(14)	Small country elevators in area of production	15
13(b)(15)	Processing maple sap into sugar or syrup	(2)
13(b)(16)	Transportation of farm products or farm harvesting employees	21
13(b)(17)	Taxicab drivers	22
13(b)(20)	Small fire protection or law enforcement agencies	40
13(b)(21)	Domestic service live-ins	93
13(b)(24)	Substitute parents for institutionalized children	NA
13(b)(27)	Motion picture theaters	72
13(b)(28)	Small loggers (less than 9 employees)	33

[1] Estimated number of nonsupervisory employees in categories in which exemption applies.
[2] Less than 10,000 employees.

Note.—Section 13(b) (4), (7) (8) (18) (19), (22), and (23) have been repealed.

Source: U.S. Department of Labor Employment Standards Administration, Office of Management, Administration and Planning. Division of Program Development and Research, Mar. 21, 1988.

TABLE 7.—RELATIONSHIP OF MINIMUM WAGE TO CROSS AVERAGE HOURLY EARNINGS OF PRODUCTION OR NONSUPERVISORY WORKERS IN PRIVATE NONFARM ESTABLISHMENTS, 1961–87

	Minimum wage	Ratio/AHE (percent)
Year:		
1961 (September)	$1.15	49.1
1962	1.15	51.8
1963 (September)	1.25	51.8
1964	1.25	53.0
1965	1.25	50.8
1966	1.25	48.8
1967 (February)	1.40	51.9
1968 (February)	1.60	55.4
1969	1.60	52.6
1970	1.60	49.5
1971	1.60	46.4
1972	1.60	43.2
1973	1.60	40.6
1974 (May)	2.00	44.1
1975 (January)	2.10	46.4
1976 (January)	2.30	47.3
1977	2.30	43.8
1978 (January)	2.65	46.6
1979 (January)	2.90	47.1
1980 (January)	3.10	46.5
1981 (January)	3.35	46.2

TABLE 7.—RELATIONSHIP OF MINIMUM WAGE TO CROSS AVERAGE HOURLY EARNINGS OF PRODUCTION OR NONSUPERVISORY WORKERS IN PRIVATE NONFARM ESTABLISHMENTS, 1961–87—Continued

	Minimum wage	Ratio/AHE (percent)
1982	3.35	43.6
1983	3.35	41.8
1984	3.35	40.3
1985	3.35	39.1
1986	3.35	38.2
1987	3.35	37.3
Average		46.4

Note.—In years when the minimum wage was changed, the calculations are based on the average level of the minimum during the year.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning Division of Program Development and Research, Mar. 29, 1988.

TABLE 8.—RELATIONSHIP OF PROPOSED MINIMUM WAGE TO GROSS AVERAGE HOURLY EARNINGS OF PRODUCTION OR NONSUPERVISORY WORKERS IN PRIVATE NONFARM ESTABLISHMENTS

Period	Average hourly earnings (private non-farm)	Proposed minimum [1]	Percent
Calendar year:			
1987	$8.98		
1989	9.43	$3.75	39.8
1990	9.67	4.15	42.9
1991	9.91	4.55	45.9

[1] The first year increase of 40 cents an hour becomes effective January 1, 1989, and is followed by two increases of 40 cents an hour effective January 1 of 1990 and Dec. 31, 1990.

Note.—Assumption-Gross average hourly earnings will rise 2.5 percent annually for the years 1988–1991.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, July 11, 1988.

IV. Hearings

The Committee on Labor and Human Resources held three days of public hearings on S. 837: June 10, 1987, July 17, 1987, and July 23, 1987. The following persons and organizations appeared as witnesses and presented oral and written testimony:

June 10, 1987

The Honorable William E. Brock, U.S. Secretary of Labor, Washington, DC;

Ms. Rena Blankenship, New Castle, Virginia;

Ms. Shirley Slagle, Kittanning, Pennsylvania;

Mr. James G. O'Hara, Chairman of the federal Minimum Wage Study Commission, Washington, DC;

Mr. Arthur Flemming, Citizen's Committee for a Just Minimum Wage, Washington, DC;

Mr. William Stone, U.S. Chamber of Commerce, Washington, DC;

Mr. Ronald Sarisin, Minimum Wage Coalition to Save Jobs, Washington, DC;

Ms. Virginia McCormac, President of Seattle Goodwill, Seattle, Washington.

July 17, 1987

Dr. F. Gerard Adams, Professor of Economics and Finance, University of Pennsylvania, Philadelphia, Pennsylvania;

Dr. David H. Swinton, Southern Center for Studies in Public Policy, Clark College, Atlanta, Georgia;

Dr. Finis R. Welch, Professor of Economics, UCLA, Los Angeles, California;

Dr. John R. Glennie, Vice-President, Robert R. Nathan Associates, Inc., Washington, DC.

July 23, 1987

Mr. Lane Kirkland, President, AFL-CIO, Washington, DC;

Mr. Jay Mazur, President, International Ladies Garment Workers Union, New York, New York;

Mr. John Sweeney, President, Service Employees International Union, Washington, DC;

Mr. Jacob Scheinkman, President, Amalgamated Clothing and Textile Workers Union, New York, New York;

Mr. Mathew A. Runci, Manufacturing Jewelers and Silversmith's of America, Providence, Rhode Island;

Mr. Walter Ellis, Jr., President, New Jersey Farm Bureau, Trenton, New Jersey;

Mr. Douglas Fontaine, American Hotel and Motel Association, Pascagoula, Mississippi.

The following persons and organizations provided written testimony for the record during the course of the hearings:

June 10, 1987

Barry, Hon. Marion, Jr., Mayor, Washington, DC;

Coalition of Automotive Associations (CAA);

Cooney, David M., Rear Admiral, USN (Ret.), president and chief executive officer, Goodwill Industries of America, Inc.;

Keyserling, Mary Dublin, consulting economist, on behalf of the National Consumers League;

National Grocers Association;

National Small Business United (NSBU);

Roosevelt, James, former Congressman and chairman of the National Committee to Preserve Social Security and Medicare;

Schreiber, G. Richard, president, National Automatic Merchandising Association;

Wilson, Donald T., director, government relations, National Tire Dealers and Retreaders Association.

July 17, 1987: Williams, Walter E.

July 23, 1987

American Jewish Congress.

Hotel Employees and Restaurant Employees International Union

Joseph, Joel D.

National Federation of Independent Business.

Wynn, Willian H., international president, United Food and Commercial Workers International Union (AFL-CIO).

V. Committee Views

A. THE PROPOSED INCREASES IN PERSPECTIVE

The current minimum wage represents the lowest percentage of average hourly earnings since 1949. Over the fifty year history of the FLSA, Congress has adjusted the minimum wage to maintain a level roughly half of the average hourly wage in the economy. Today the federal minimum is equal to only 36% of the average hourly wage. According to the Department of Labor, these increases will bring the minimum to 39.8% of the average in 1989; 42.9% in 1990; and 45.9% in 1991.

It is the Committee's view that these modest step increases, the first since the minimum wage was increased to the current $3.35 in 1981, are essential to restore the vitality of the FLSA and to improve the lives of millions of low wage workers. The historic evidence amply justifies the committee view that the proposed increases will have no discernible adverse impact on the nation's economy.

For fifty years Congress has maintained and expanded this public policy of a wage floor below which no one should be paid. In the last fifty years this country has become the leading economy of the free world, and has done so with this policy that no full-time worker should be condemned to a lifetime in poverty. The economic well-being of our nation's lowest paid workers has been the cornerstone on which much of our relative prosperity has been built, as well as the keystone of our political stability.

Restoring the lost purchasing power to the minimum wage will improve the lives of the 15 million of our nation's lowest paid workers, a disproportionate number of whom are women, blacks, and other minorities. The vitality of the American work ethic for our nation's low-wage workers is threatened when full time work does not enable those workers the measure of decency and dignity that is the promise of the Fair Labor Standards Act, and which is the essence of the American dream.

B. EMPLOYMENT AND UNEMPLOYMENT

The minimum wage debates have always contained assertions that increasing the wage will lead to increased unemployment and decreased employment. Yet, the historical record shows that in each year following an upward adjustment in the minimum wage, except the recession year of 1975, employment has increased and, with few exceptions, unemployment has decreased.

Year	Increase in minimum	Unemployment	
		Before	After
1949	87	5.9	5.3
1955	33	4.4	4.1
1961	15	6.7	5.5
1966	30	3.8	3.6
1974	25	5.6	7.6
1977	10	7.1	6.1
1982	0	7.6	9.7

More recent evidence against claims that the minimum wage causes unemployment is provided by the experience of states that have raised their minimum to levels higher than the federal minimum. Since 1981, ten states have raised their minimum wage above the federal wage, yet, in all these states, except Alaska during the recession year of 1982, employment has increased and unemployment has decreased or remained the same.

State	Minimum	Employment		Unemployment	
		Before	After	Before	After
	1982	1982	1983	1982	1983
Alaska	$3.85	190,000	210,000	9.3%	-10.3%
	1987	1986	1987	1986	1987
Connecticut	$3.75	1,673,000	1,695,000	3.8%	3.3%
	1988	1987	5/1988	1987	5/1988
Hawaii	$3.85	495,000	515,200	3.8%	2.9%
	1986	1986	1987	1986	1987
Maine	$3.55	531,000	561,000	5.3%	4.4%
	1987	1987	5/1988	1987	5/1988
	$3.65	561,000	565,357	4.4%	4.4%
	1986	1986	1987	1986	1987
Massachusetts	$3.55	2,941,000	2,987,000	3.8%	3.2%
	1987	1987	5/1988	1987	5/1988
	$3.65	2,987,000	3,430,000	3.2%	2.9%
	1988	1987	5/1988	1987	5/1988
Minnesota	$3.55	2,137,000	2,281,000	5.4%	3.8%
	1988	1987	5/1988	1987	5/1988
New Hampshire	$3.55	573,000	588,800	2.5%	2.3%
	1987	1986	1987	1986	1987
Rhode Island	$3.65	488,000	500,000	4.0%	3.8%
	1987	1986	1987	1986	1987
Vermont	$3.55	278,000	285,000	4.7%	3.6%

California raised its minimum to $4.25 on July 1 of this year. Maine will be raising its minimum to $3.76 on January 1, 1989 and $3.85 on January 1, 1990. Massachusetts which has raised its minimum twice in recent years, rasied it again to $3.75 on July 1 of this year, on that date, Rhode Island raised its minimum again to $4.00. Other states scheduled to raise their minimum include: Connecticut to $4.25 by October 1, 1988; Minnesota to $3.85 by January 1, 1989 and to $3.95 by January 1, 1990; and New Hampshire to $3.65 by January 1, 1989.

During the hearings on S. 837, the Committee received three major studies on the job loss impact of raising the minimum wage. One was by Nathan Associates commissioned by the Retail Industry Task Force, another by the National Chamber Foundation commissioned by the U.S. Chamber of Commerce, and the third a simulation with the Wharton econometric model commissioned by the Economic Policy Institute. These were presented in the June and July 1987 Senate hearings on amending the Fair Labor Standards Act of 1938.

These studies were based on the original Senate bill which contained increases to $3.85, $4.25, $4.65, and 50% of the average wage in 1991 (according to DOL projections approximately $4.95 in the fourth year).

The study by the National Chamber Foundation is perhaps the most unreliable of the three mentioned. It relies on the outdated statistical relationships summarized by Brown, Gilroy, and Kohen in their 1982 publication concerning the employment effects of the minimum wage. The study also failed to account for the declining percentage of the workforce consisting of minimum wage workers, ignored the decline in the supply of teenage and young adult labor, and did not consider states which have higher minimum wages than the federal.

In another study received by the Committee, the Chamber of Commerce projects the largest employment loss will be in California. However, the California minimum is currently set at $4.25, higher than even the second year of the proposed increase in the federal minimum. The study similarly attributes losses of jobs in other states in which the state minimum is higher than the federal wage, and that job loss would have to be entirely discounted from the estimate to the extent that the state wage is higher than the federal wage. Of the total job loss estimate of the Chamber for 1990, 397,616 will be in states or the District of Columbia which have higher minimum wages than the federal wage.

The Chamber study presented in the 1987 testimony relies on a formula which links a 10% increase in the minimum with a .5% to 1.5% decrease in teenage employment. Yet this relationship was determined over the period of the mid 1950's to the late 1970's, a time when the minimum wage was, on average, about one half of the average wage. Today the minimum wage is only about 36% of the average wage. This larger gap between the minimum and the average wage renders the old relationship invalid. In his 1987 testimony Dr. F. Gerard Adams pointed out that "the larger the gap, the fewer individuals directly affected by the increase in the minimum wage and the less the impact on the average wage. Moreover, the larger the gap, the less is likely to be the impact of the ripple effect, as other wages are adjusted in sympathy."

There is another reason why the relationship relied upon by the Chamber is no longer valid. David Luskin, while working at the Department of Labor, presented a paper in which he conducted the statistical analysis relied upon by the Chamber . Luskin, however, incorporated the changed demographics and the lower relative minimum wage. He found that given this new data there was, for the most part, no longer any statistically significant relationship between an increase in the minimum wage and a decline in employment. This means that one can no longer rely on the outdated conclusions of the previous studies. His results are not surprising given that there will be over 1.5 million less teenagers and young adults by 1991. With labor force participation rates of 54% and 77% respectively, there will be nearly 500,000 fewer teens (16–19 years) and almost 600,000 fewer young adults (20–24 years) in the labor force by 1991. The Chamber conclusion, that as a result of the minimum wage increase there will be 750,000 fewer jobs after the first three years is neither supported by historic experience nor the experience of states with higher minimums. However, there may well be less teens employed; not due to the minimum wage, but due to the fact that there will be over 1,000,000 less young workers aged 16–24 by 1991.

The conclusions of John Glennie of Nathan Associates similarly ignore the minimum wages of states, the supply of teenage labor, the percentage of the workforce employed at the minimum wage, and the questionable "consensus" outlined previously regarding the relationship between raising the minimum wage and the loss of jobs. The methodology by which Mr. Glennie reached his conclusions was not available in his prepared statement. However, in his verbal testimony Mr. Glennie indicated his reliance on "the body of economic literature" for his conclusion. There is little doubt that he was referring to the economic consensus expressed by Brown, Gilroy, and Kohen in their 1982 article regarding the effect of an increase in the minimum wage on employment. Yet, it is this very literature which is no longer valid given the larger minimum wage gap, the changed demographics, and the falling percentage of the workforce made up of minimum wage workers.

The conclusions of Dr. F. Gerard Adams based on the results of S. 837 being run through the Wharton macro-economic model were the least inaccurate of the three studies. The Wharton model is one of the best known models, and has been relied on extensively by a great number of government agencies and businesses over the last twenty years.

The Wharton model estimated a .05 percentage point increase in the unemployment rate, if the wage were increased to $4.65 by 1990. In terms of today's labor market, .05% unemployment would be approximately 50,000 to 60,000 jobs. The study did not formally address the question of jobs not created, but Dr. Adams estimated that the effect on employment to be what amounts to .0017% of the current labor force.

There are two observations which should be kept in mind. First, these figures are based on increases to $4.65 in 1990 and to $4.95 in 1991 under the first year of indexing. The bill under consideration is limited to an increase to $4.55. Second, given the real wage gains to the 15 million (13% of the labor force) making less than $4.55 an hour, the estimated number of jobs not created is a relatively small price to pay. The small number of jobs which might not be created, moreover, is dwarfed by the projected increases in the labor force. According to the Congressional Budget Office, the labor force will grow by 4.6 million between 1988 and 1991. The job loss the Wharton study attributes to the minimum wage increase represents just .04% of this growth.

Yet as reported in *Business Week,* October 19, 1987, even the Wharton estimate of job loss is too high. This *Business Week* which describes the common flaws of all the macro-economic model estimates of job loss, notes that, "the fewer minimum wage jobs there are, the less impact on employment if the minimum wage rises." In fact, the number of people working at or below the minimum wage has come to represent a smaller and smaller percentage of the hourly workforce, from 15% in 1981, to 8.8% in 1986, to 7.9% in 1987.

At the request of the Chairman, the Congressional Budget Office provided the Committee with an estimate of employment impact under S. 837. CBO based its estimate, which appears in section VI of this report, on a review of available economic studies, and esti-

mated S. 837 would reduce employment through 1991 a few tenths of one percent, or approximately 175,000 to 350,000 jobs.

As CBO notes in its letter to the Chairman, "any attempt at quantifying the employment impact of increases in the minimum wage is subject to a wide margin of error. If anything, such estimates are now even more uncertain than usual because of special circumstances".

The special circumstances not taken into account by CBO in arriving at its quantitative estimate include the following factors. CBO does not account for S. 837's increase of the small business exemption to $500,000 in gross sales from the current $362,000 (exempting an additional 1.15 million workers from FLSA coverage). Nor did CBO quantitatively subtract from their estimate the jobs in the 12 jurisdictions in which the minimum wage already exceeds the federal minimum, and in most cases exceeds the first year or two of the proposed rates contained in S. 837. Other factors not accounted for in the numerical estimate of job loss include the significant decline of the teen and young adult population between now and 1991, and the continued decline in the percentage of hourly workers that are paid the minimum.

Finally, the CBO was unable to provide an estimate of the effect on the Wharton estimate given the one year lag in the effective date of the increases and the lower rates established by S. 837.

All these estimates and projections of employment loss must be put in both their historical and current contexts. First, the actual impact of past increases never matched the economists' projections.

Second, even if the current projections are assumed to be correct, they must be applied in the context of the projections for the labor force and for employment growth through 1991. CBO estimates the labor force will increase 4.6 million by 1991. The Department of Labor projects employment will increase 5.36 million by 1991. In other words, the job creation in the economy will demand 766,000 more workers than the population is scheduled to provide. Even assuming CBO's worst-case rough estimate of lost jobs (350,000), the potential number of jobs created with S. 837 in place will still exceed the labor force growth by 416,000 jobs.

Put in the context of teens and young adults, the focus of concern for many opponents of the minimum wage increase, the numbers are more startling. Even if 80% (280,000) of the "lost jobs" projected by CBO were for teens and young adults (16–24), by 1991 there will be 1.1 million less 16–24 years olds. Hence, demand for 20–24 years olds would outstrip the supply of these young workers by 820,000.

This youth labor shortage has not gone unnoticed by low-wage employers. In a study conducted by Arthur D. Little Inc. for the National Restaurant Association, A.D. Little concluded that due to these demographic changes, the food service industry alone will face a potential labor shortage of 1.1 million workers by 1995.

C. INFLATIONARY IMPACT

Many critics of the minimum wage argue that it fuels inflation and that workers who benefit from an increase in the minimum wage will receive no real gain due to the increase in the price of

the goods they purchase. This type of reasoning is incorrect and ignores a number of important points.

The Congressional Budget Office summarized estimates of this inflationary impact from the results of the Minimum Wage Study Commission and the work of Dr. F. Gerard Adams. The impact is assumed to be between .2 and .3 percentage points per year. So that, for example if the inflation rate would be 5% for 1989, it would be 5.2 or 5.3% with the increase in the minimum wage. Dr. Adams likened this to the system wide effects of a 10 cent increase in the price of gasoline.

This estimate is high for many of the same reasons that the job loss estimates were overstated. For example, since the gap between the current minimum and the average wage is much greater than it was when these estimates were made, the impact today would be less. A lower minimum wage in relation to other wages in the economy, means a lesser inflationary "ripple" effect on these other wages as some are adjusted to maintain wage differentials.

Because the proportion of minimum wage workers has been falling, the inflationary aspect of the minimum wage will be further diminished. Common sense dictates that the fewer workers there are at the minimum wage, the less will be the increase in labor costs and prices resulting from higher payments to minimum wage workers.

Finally, with fewer teenage and young adult workers, employers would be forced to bid up wages any way to attract the scarce labor. Of course, one of the problems with a fragmented labor market and one of the reasons behind the need for a federal wage floor is that there would be many disadvantaged workers who would not benefit from these pressures to raise wages. But there would be a good number of workers currently at or near the minimum wage whose bargaining power would be increased by this restriction in labor supply.

D. SMALL BUSINESS THRESHOLD TEST

It is the Committee's view that with this increase in the minimum wage there should be a commensurate increase in the Retail-Service Enterprise Test. The current threshold of $362,500 will be raised to $500,000 under the bill, an increase of 37.9% compared to the increase in the minimum wage of 35.8%.

Those existing retail or service establishments with gross sales between $362,500 and $500,000 will continue to be required to pay the current minimum of $3.35 an hour. This continuation of the prior rate for employees currently protected by the FLSA is consistent with previous amendments to the enterprise test, and is intended to ensure that current employees benefitting from the wage floor will not suddenly be subject to pay reductions by operation of the expansion of this exempt category.

According to an internal Department of Labor study, this change in the enterprise test will add 1.15 million workers to this exempt category.

E. PUERTO RICO AND THE VIRGIN ISLANDS

S. 837 removes the Virgin Islands from the special industry committee provisions of the FLSA, and hereafter the Virgin Islands are covered by the full 6(a) wage provisions. This was done at the request of the delegate from the Virgin Islands. In light of the fact that the Virgin Islands minimum wage was recently raised above the federal wage, the full coverage by the federal rate will have no effect on the territories. S. 837 also amends the Fair Labor Standards Act to provide generally for the full inclusion of Puerto Rico in the annual minimum wage increases proposed under Section 6(a). On a case by case basis, however, wage orders promulgated by the Secretary of Labor will permit payment of wages at less than the Section 6(a) rate for the Commonwealth's lowest wage industries which otherwise would suffer significant economic distress.

Historically, in order to minimize economic dislocation in Puerto Rico, every increase in the minimum wage since 1940 has been accompanied by the enactment of an exception for Puerto Rico. Every amendment has provided for the appointment of special industry committees with the authority to recommend minimum wages to the Secretary of Labor according to the special economic circumstances of each industry.

The stated goal of the previous amendments was that the minimum wage in Puerto Rico should eventually reach the rates established by Section (6) for the mainland. Nevertheless, the general rule was to require substantially less than the Section 6(a) rates and to bring industries in the Commonwealth up to the mainland rates only over an extended period of time. For example, the minimum wage rates enacted in the 1977 amendments to the Act were not required to be fully applicable in Puerto Rico until 1984.

The amendment adopted by the Committee departs significantly from past policy by providing for the first time that the general rule for industries in Puerto Rico will be to apply the same minimum wage level as is required for mainland industries by Section 6(a). Only as an exception to the general rule, the Commtitee has provided general authority for the Minimum Wage Board of Puerto Rico, an independent body whose members are appointed for fixed terms, to petition the Secretary of Labor to convene special industry committees to recommend that the Secretary promulgate lower minimum wage rates for the Commonwealth industries which have a substantially lower wage structure than U.S. mainland industries, and which could suffer substantial employment losses if the Section 6(a) rates were applied. This exception is designed to be exercised in the case of private or public sector employers on an industry by industry basis, and only when justified by their particular economic circumstances. The Committee intends the Secretary of Labor to carefully review such petitions and the supporting data, and only if the Secretary is convinced that a special industry committee is necessary to avert substantial curtailment of employment should this exception be utilized.

The new mechanism, although more limited than any previously enacted amendment for the Commonwealth, is essential in light of Puerto Rico's unique circumstances. The Committee recognizes that, despite its significant progress in recent years, the Common-

wealth's economy is still developing and continues to have substantial disadvantages in comparison to the mainland. Its wage structure is markedly lower than on the mainland, and, therefore, is far more affected by the minimum wage than any state. The average hourly manufactured wage in Puerto Rico in 1987 was $5.38 as compared to the U.S. average of $9.85. Consequently, the proposed minimum wage increases, as a proportion of average wages will be nearly twice as much as Puerto Rico as on the mainland. Moreover, Puerto Rico's natural and capital resources are far more limited than on the mainland; its per capita personal income is one-third of that on the mainland; and its unemployment rate is nearly three times higher.

In addition to these reasons for providing a continuing flexible minimum wage process for the Commonwealth, the Committee has also recognized the extraordinary range of mandatory fringe benefits which employers must provide to Puerto Rican workers. Puerto Rican workers are entitled to receive an annual bonus of two percent of their wages (up to $10,000), disability benefits, paid annual and sick leave, and paid maternity leave. Moreoever, workers there are required to receive double time for work in excess of eight hours in a day, as well as for more than 40 hours in a week, and they also receive severance pay for discharge without just cause. These mandated benefits, which far exceed those required by any state, constitute an important part of Puerto Rico's unique economic circumstances which have always been recognized by the Congress in enacting minimum wage increases.

Those who might criticize the separate treatment of Puerto Rico under the Committee bill conveniently ignore both the long history of separate FLSA provisions regarding the territories and the disparate wage and benefit structures. An inflexible across-the-board increase to $4.55 an hour in Puerto Rico would be the equivalent of a $9.00 an hour minimum in today's mainland economy. If the Committee were considering a $9.00 an hour minimum wage bill for all employees on the mainland, it may well have to consider a similarly flexible approach as that which has been adopted for Puerto Rico. But that is not the case facing this Committee, and comparisons with employment circumstances on the mainland miss both the historical and factual mark.

VI. Cost Estimates

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 11, 1988.

Hon. Edward M. Kennedy,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 837, the Minimum Wage Restoration Act of 1988, as ordered reported by the Senate Committee on Labor and Human Resources on June 29, 1988. We estimate that enactment of S. 837 would result in no direct costs to the federal government. There is a potential for authorization increases in federal contracts, however, but data limitations preclude an estimate of the size.

S. 837 would increase the federal minimum wage in three steps between now and January 1, 1991. The new levels would be $3.75 per hour for the year beginning January 1, 1989; $4.15 per hour for the year beginning January 1, 1990; and $4.55 per hour after December 31, 1990. S. 837 would also increase the small business exemption from the minimum wage and other labor standards from the current level of $362,500 in gross sales to $500,000.

Basis of estimate.—Increasing the minimum wage could increase the administrative and enforcement caseloads within the Wage and Hours Division of the Employment Standards Administration at the Department of Labor (DOL). While this could result in higher costs to the federal government, S. 837 provides no additional authorization of appropriations for this purpose.

To the extent that federal contractors use minimum wage labor, federal costs could increase as a result of enactment of S. 837. However, there is no data available with which to estimate this effect. Increases in the minimum wage may also affect service levels in several federal programs because participants' pay is based on the minimum wage. Programs that may be affected are the Summer Youth Employment program, Community Service Employment for Older Americans, and the College-Work Study program. Because S. 837 does not increase authorizations of appropriations for these activities, the increase in wages might have to be offset by lowering the number of participants.

In previous CBO estimates of a similar bill, H.R. 1834, as reported from the House Education and Labor Committee, additional federal costs were shown for increased wages to certain support personnel on U.S. military bases. We have since learned, however, that these workers are not paid with federal monies, and therefore increasing the minimum wage as specified in S. 837 (or in H.R. 1834) would not result in additional costs to the federal government due to increased wages for these workers.

Estimated cost to state and local governments.—To the extent that state and local governments have workers who are paid at the current minimum wage or between the current minimum wage and the higher wages prescribed in S. 837, state and local government wage costs could increase with the enactment of S. 837. There is no data with which to eliminate the magnitude of these costs. Furthermore, the effects will vary from state to state. For example, these are now 11 states that have set minimum wage levels above the federally mandated $3.35 per hour. In these states, the new federal minimum wage rates could have less of an effect than in states in which the minimum wage is at the current Federal level.

If you need additional information, we will be pleased to provide it. CBO's staff contact is Michael Pogue (226-2820).

Sincerely,

JAMES L. BLUM,
Acting Director.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 25, 1988.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In response to your letter of July 11, 1988, the Congressional Budget Office has analyzed the potential employment effects of S. 837, the Minimum Wage Restoration Act of 1988, as ordered reported by the Senate Committee on Labor and Human Resources on July 29, 1988. Our analysis suggests that S. 837 could cause a moderate reduction in the level of employment between 1989 and 1991—on the order of a few tenths of one percent by 1991 or appoximately 175,000 to 350,000 jobs.

These estimates are based primarily on a review of available economic studies of the impact of minimum wages. We had to account separately, however, for a number of special factors like the ones listed in your letter, since they are not, in general, taken into account in these studies. We also took into account other considerations, such as the response of monetary policy to higher inflation, that could offset the impact-lowering implications of these special factors. We ended up with estimates in the lower part of the range reported by independent studies. A detailed description of our estimates is enclosed.

I wish to emphasize that any attempt at quantifying the employment impact of increases in the minimum wage is subject to a wide margin of error. If anything, such estimates are now even more uncertain than usual because of special circumstances.

If you need further details on these estimates, we will be pleased to provide them. The CBO staff contact is George Iden, who can be reached at 226-2759.

Sincerely,

JAMES L. BLUM,
Acting Director.

VII. REGULATORY IMPACT

In accordance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the following statement of the regulatory impact of S. 837 is made:

A. ESTIMATED NUMBER OF INDIVIDUALS AND BUSINESSES REGULATED AND THEIR GROUPS OF CLASSIFICATIONS

It is estimated that S. 837 would not regulate any additional individuals or businesses, as it does not contain any expansion of coverage by the Fair Labor Standards Act. Section 3 of the bill raising the retail or service enterprise test from $362,500 to $500,000 would result in additional 1,150,000 workers being added to that exempt classification, according to the Department of Labor.

B. ECONOMIC IMPACT OF THE INDIVIDUALS, CONSUMERS, AND BUSINESSES AFFECTED

The economic impact of the legislation is relatively small in the aggregate and imperceptible to the individual, according to one expert testifying before the Committee. It is estimated that there are almost 15 million employees out of a labor force of over 110 million earning less than $4.55 an hour, and most of these would be covered employees receiving increases over the three years ranging from $.05 an hour to $1.20 an hour.

According to testimony received by the Committee, these wage increases could result in an additional .2% added to the Consumer Price Index. One expert informed the Committee the inflationary impact on consumers of the minimum wage bill would be the equivalent of a 10 cent increase in the price of gasoline.

While over 90% of employees are covered by the FLSA and would be entitled to the new minimum wage rates, most businesses already pay in excess of the rates established by this bill, and will not realize a measurable impact.

C. IMPACT OF THE ACT ON PERSONAL PRIVACY

This legislation will have no impact on personal privacy.

D. ADDITIONAL PAPERWORK, TIME, AND COSTS

This legislation will result in some additional paperwork, time and costs to the Department of Labor, in upgrading their FLSA regulations to reflect the amendments to the Act and in preparing, printing, and distributing new minimum wage notices to covered employees. There will be no additional paperwork or recordkeeping for covered employers, other than adjusting payrolls if current compensation is below the new minimum rates, and in replacing existing minimum wage notices with new ones reflecting the new rates.

VIII. Section-by-Section Analysis

Section 1—Short Title

Section 1 provides that the short title of S. 837 is the Minimum Wage Restoration Act of 1988.

Section 2—Restoration of Minimum Wage

Section 2 amends paragraph 1 of section 6(a) of the FLSA to provide the applicable minimum wage to be: not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990.

Section 3—Change in Enterprise Test

Section 3(a) amends the retail or service enterprise test of section 3(s)(2) of the FLSA (29 USC 203(s), adjusting the test from the current $362,500 in annual gross sales to $500,00 in annual gross sales. Except as provided elsewhere in the Act, retail or service enterprises grossing less then $500,000 are not covered by the FLSA.

Section 3(b) amends the next to last sentence in section 3(s) of the FLSA to provide that retail or service enterprises which have gross annual sales of $362,500 on December 31, 1988, and would be covered under the current provisions of the law, would continue to be obligated to pay $3.35 an hour, even though they fall into the newly expanded exempt category.

Section 4—Puerto Rico and the Virgin Islands

Section 4(a) amends section 5(a) of the FLSA to provide that in the Secretary of Labor shall, upon petition by the Minimum Wage Board in Puerto Rico, appoint a special industry committee to recommend the applicable minimum wage to be paid in that industry if the Secretary determines: 1) there exists a substantial and significant difference in the wage structure on the mainland and on the island; 2) there is reasonable cause to believe application of the full rate would substantially curtail employment; and 3) notice of the Minimum Wage Board petition ha been provided to all interested parties and the public in Puerto Rico.

Section 4(b) amends section 6(c) of the FLSA to provide that the minimum wage provided for in section 2 of the bill is applicable to Puerto Rico (and the Virgin Islands), except as provided for in the exceptional circumstances detailed in section 4(a) of the bill.

The balance of section 4 are technical and conforming amendments deleting the appropriate references to the Virgin Islands in other sections of the FLSA so as to reflect that the Virgin Islands are not subject to special industry committee wage determinations.

IX. Committee Action

The Committee on Labor and Human Resources met on June 22, 1988 and again on June 29, 1988 to consider S. 837, the Minimum Wage Restoration Act.

The Committee agreed by unanimous consent to treat the substitute offered by Chairman Kennedy as original text for the purposes of amendment.

The Committee failed to adopt a motion to table the Kennedy substitute to the amendment offered by Senator Simon dealing with Puerto Rico and the Virgin Islands, by roll call vote, 4–12.

YEAS	NAYS
Metzenbaum	Kennedy
Matsunaga	Pell
Simon	Dodd
Quayle	Harkin
	Adams
	Mikulski
	Hatch
	Stafford
	Thurmond
	Weicker
	Cochran
	Humphrey

The Committee adopted the Kennedy substitute dealing with Puerto Rico and the Virgin Islands, by voice vote.

The Committee considered and adopted the Kennedy amendment in the nature of a substitute as amended by voice vote, and by a roll call vote 11–5, the Committee agreed to the motion to favorably report S. 837, as amended.

YEAS	NAYS
Kennedy	Hatch
Pell	Quayle
Metzenbaum	Thurmond
Matsunaga	Cochran
Dodd	Humphrey
Simon	
Harkin	
Adams	
Mikulski	
Stafford	
Weicker	

X. Additional and Minority Views

ADDITIONAL VIEWS OF SENATOR PAUL SIMON—THE MINIMUM WAGE AND PUERTO RICO

The estimated per capita income for the United States is $10,797; the same average in the State of Mississippi is $7,483; the average per capita income in the Commonwealth of Puerto Rico is $4,301. If for no other reason, the minimum wage should be extended in full to the workers in Puerto Rico for this reason alone.

Beyond this, however, are the productivity statistics for Puerto Rico. It is hardly a "third world" or "underdeveloped" nation. These statistics are for the period from 1978 to 1981, when the minimum wage of the mainland was being phased in on Puerto Rico:

An increase of jobs of 32,000 from 710,000 to 742,000;

Unemployment reduction from 20% in 1977 to 19% in 1978, 18% in 1979 and 17% in 1980 (in 1981 unemployment increased to 18% due to the recession on the mainland;

Average manufacturing wages increased from $4.39/hr. in 1981 to $5.31/hr. in 1986;

Even in apparel and other textile products which are normally considered "borderline" industries, average wages were $3.95 for 1986, 20 cents above the proposed increase for 1989;

Corporate profits increased from 1971 to 1974 by 331.8%; salaries and wages increased by only 22.8% for the same period;

The productivity index for Puerto Rico is higher than the mainland and second only to Japan;

Absenteeism if 9% lower than on the mainland; turnover rate is 18% lower;

In other words, Puerto Ricans work more productively than mainland employees for less-than-mainland wages.

Some say the cost of living is actually lower on Puerto Rico than on the mainland. In that case, why does the federal government mandate a 7% increase for workers in Puerto Rico due to a higher cost of living there than in Washington, DC, where the cost of living is higher than everywhere in the nation but New York and San Francisco?

Some comparisons:

On the mainland, for 1984 apparel and textiles wages were 67% of the average wages; in the children's outerwear category, the wages were 59% of the average wage;

In the eating and drinking category average wages were $4.33 or 51% of the national average.

The average manufacturing wage in Puerto Rico is lower than Mississippi and the Virgin Islands.

The behavior of these sectors has not influenced Congress to exempt them from the proposed minimum wage increase—the same should hold true for Puerto Rico.

GOVERNMENT SUBSIDIES TO PUERTO RICO

The Federal government of the United States as well as the Commonwealth of Puerto Rico government offer businesses significant incentives to locate on the island:

Section 936 of the U.S. Tax Code: Section 936 exempts Puerto Rico and the Virgin Islands from paying federal income tax on income generated in Puerto Rico by any mainland subsidiary. This generates approximately $4 billion in revenue foregone to the mainland United States and approximately $7 to $8 billion in cash flow deposited to U.S. subsidiary acconts which can then be sent to the parent company on the mainland—still not subject to federal taxation;

Qualifying manufacturers and service industries enjoy a 90% exemption from Puerto Rico taxes. Exemptions last from 10 to 25 years depending upon location. Effective income tax rates range from 2.4% to 4.5% maximum for the complete period. Exemptions include all local and commonwealth taxes on corporate earnings, real estate, personal property and municipal taxes and, by provision of U.S. law, 100% exemption from U.S. federal taxes on corporate earnings.

Municipal fees, excise and other license taxes are 60% exempt for the duration of the tax exemption grant.

Manufacturers receive an additional 15% production payroll deduction up to a maximum of 50% of their industrial development income for computing adjusted taxable income, under certain conditions.

U.S. companies can repatriate profits from Puerto Rico on a current basis free of federal taxes.

Puerto Rico tollgate taxes on current profit repatriation can be reduced to 0 upon meeting certain minimum investment requirements.

There is a total exemption of the first $100,000 of net profits provided the company's profits are under $500,000 a year and the company employs 15 people during the taxable year.

A firm can elect to defer its tax exempt years on an annual basis. This enables a firm to save its tax exemption for the years in which profit flow is most appropriate to warrant exemption.

Tax exemption is a contractual guarantee by the Commonwealth of Puerto Rico. A company's exemption grant may not be impaired or revoked without cause.

Qualifying service industries exporting services outside Puerto Rico receive most of the above exemptions for 10 to 25 years, depending on location.

The Puerto Rico Industrial Development Company (PRIDCO) is the engineering, construction and leasing arm of the Economic Development Administration. PRIDCO is responsible for constructing, in advance of demand, industrial parks and buildings. This provides immediately available space to manufacturers and service companies establishing operations under the Island's program of tax exemptions and other inducements. According to January 1987 statistics, over the past four decades, PRIDCO has built 96 industrial parks and has acquired

or constructed 27.9 million square feet of industrial space: 20.7 million s.f. or 93% of currently-owned PRIDCO space is under lease to industries promoted by EDA; 5.6 million s.f. is now used by manufacturers who opted to purchase PRIDCO facilities. This leasing arrangement is at a reduced cost and construction may be arranged under lease-back or sale arrangements.

Special locational incentives in the form of negotiable cash grants are available for manufacturers locating in areas of high unemployment (which includes most of the Island) and can be applied toward the following: training of supervisory personnel, salaries for instructors and technical personnel while training production workers, payment of rent during initial startup period of operations, full or partial payment of freight charges on machinery and equipment from point of origin to the plant in Puerto Rico, and other purposes, subject to the approval of PRIDCO's Investment Committee.

With all of these incentives for business in Puerto Rico, surely the companies can afford to pay the minimum wage!

ARGUMENTS AGAINST PUERTO RICO AMENDMENT

The amendment added at the committee level regarding Puerto Rico would require the Minimum Wage Board to petition the Secretary of labor to authorize an industry committee. The Secretary makes a determination based upon three criteria: (1) the industry must prove a significant and substantial difference in wage structures between Puerto Rico and the mainland; (2) reasonable cause must be shown that full application of the minimum would substantially curtail employment; and (3) notice of the petition must be given to all parties and the public. The Secretary could then authorize the industry committee which would consist of membership as designated by the current law (Section 208 Fair Labor Standards Act).

The arguments against this amendment are numerous—

The Minimum Wage Board, while tripartite in nature, is an appointed board by the Governor. Thus, it becomes a tool of the Governor's office and not an objective judge of conditions;

Most, if not all, industries in Puerto Rico operate on a different wage structure than that of the mainland—this condition is, for the most part, a moot point;

No criteria (objective or otherwise) is established for what "substantially curtailing employment" means;

This second criterion is a "before the fact" proof rather than an "after the fact" proof—in other words, any industry can *speculate* as to how it would be affected;

No public hearings are required, only public notice is required . . . what kind of notice is unspecified and is therefore inadequate.

The Secretary of Labor cannot know who should be appointed to make up an objective industry committee and would therefore relay on an official (such as the Governor) to assist with those appointments . . . if the Secretary could appoint a credentialed official (economist or other) to review the situa-

tion first before a determination is made, the situation might be more objective.

The principle of including Puerto Rico in the minimum wage is a fundamental one—Puerto Ricans should not be considered second class citizens. If it is sound to have an industry-by-industry approach in Puerto Rico, why not do it in Connecticut? Or in Massachusetts? Or in Vermont or Indiana? The people of Puerto Rico are covered right now by the minimum wage. Supporting the minimum wage will not get rid of jobs for workers in Puerto Rico; the labor unions representing the huge bulk of labor in Puerto Rico are not supporting a minimum wage for Puerto Rico because they want to get rid of jobs in Puerto Rico. The reality is the arguments used against the minimum wage for Puerto Rico can be used against the minimum wage in any state in our Nation.

For example, if the minimum wage is applied in an industry in Massachusetts, and that industry says that this application will have an adverse effect on its industry, should Congress exempt that industry in Massachusetts from paying the minimum wage? In another example, the Commonwealth of Massachusetts has enacted a special provision for workers in terms of health insurance benefits. Does that mean that Congress ought to say that the people in Massachusetts get a lesser minimum wage than the people in every other state? Undoubtedly, the answer to both questions is "No."

Just as the answer is "No" to these questions, the answer to exempting special industries or re-establishing the industry committees in Puerto Rico from full coverage under the minimum wage should be "No." Puerto Rico's workers ought to receive no less than they now have—the full minimum wage.

PAUL SIMON.

SUPPLEMENTAL VIEWS OF SENATOR DAN QUAYLE

SUMMARY

I believe a modest increase in the minimum wage is appropriate as part of a multi-pronged effort to alleviate the plight of the working poor. The adverse employment effects of such an increase can be ameliorated if not eliminated, by a youth training wage. In addition, adjusting the Earned Income Tax Credit (EITC) by family size will offer benefits to the large number of working poor who do not benefit from a minimum wage increase. High minimum wages alone, particularly when combined with the mandated benefits which have been proposed by this, and other Committees, will have an adverse effect on low-skilled, low wage workers.

THE ISSUE

I disagree with the views of the majority and I concur with the views of Senator Hatch. The current debate over changing the Federal minimum wage should raise many questions in the minds of most Americans. However, this tends not to be true for a large number of partisans at war over this bill. The camps are pitched and the war is on full tilt.

One group says that mandated wage increases will hurt the very low-skilled and low-wage people it is intended to assist by reducing job opportunities for marginal workers. Everyone gets a mandated raise regardless of need or merit. Small business will be hurt and inflation will heat up.

The other group says the robber-barons in the business community can afford to pay higher wages to help lift the working poor out of poverty. Prices have risen, they charge, but the minimum wage has not. Now I am hearing that we must have a mandated increase in the minimum wage to make work competitive "with the price of hubcaps."

Seldom do we hear the truth, which is somewhere in between these two divergent positions. A minimum wage increase in not necessarily bad. However, it is very clear that too high or too fast an increase will hurt youth, the disadvantaged and marginal workers. Minimum wage is not the only legislation that could have the effect of hurting the individuals it is intended to help. This Committee has been examining a number of mandated benefits the cumulative effect of which make low-skilled, entry level workers more expensive and undesirable as employees.

Over 115 million individuals are working, more than ever in this nation's history. Inflation is down drastically and unemployment is about 5.3%. As the labor market becomes tighter, demand for labor increases and wages rise. Indeed, the minimum wage in many regions is far higher than $3.35. All of this leads one to ask what is the rationale for increasing the minimum wage?

RATIONALE FOR INCREASING THE MINIMUM WAGE

Proponents say that since the last increase in the wage floor in 1981, prices have increased 30% but the minimum wage has remained the same. They charge that the minimum wage has traditionally been set at 50% of the average, private, non-supervisory, non-agricultural wage. That average wage was $9.28 for May 1988.

Finally, a most heart-wrenching argument is that the current $3.35 per hour minimum wage is not sufficient to pull a family of three out of poverty. This is certainly true. The poverty level for a family of three as set by the Secretary of Health and Human Services is $9,690. The minimum wage for a full-time worker—and *most* minimum wage workers are *not* full-time workers—is about $7,000. Although this is very distressing, it is also misleading.

WAGES ARE NOT RELATED TO FAMILY SIZE

If wages are related to family size, a minimum wage earners supporting a family of three would have to earn $4.65 per hour to meet the 1988 poverty guidelines. A family of four supported by a minimum wage earner would have to make $5.40 per hour. A family of five would have to make $6.54 per hour and a family of eight supported by a minimum wage earner would have to earn $9.37 per hour. For part-time workers the rates would have to be even higher to pull families out of poverty. Unfortunately, wage are not related to family size; welfare is.

CHARACTERISTICS OF MINIMUM WAGE WORKERS

In 1986 there were about 5.1 million workers who earned $3.35 or less. By way of comparison, in 1981, there were 7.8 million minimum wage workers, so while the minimum wage had been the same from 1981 through 1986, the number of those earning the minimum decreased considerably. About 3.3 million of all minimum wage earners worked only part-time during the year. Thirty-seven percent of all minimum wage earners were teenagers and an additional 23 percent were young adults, of 24 years of age or less.[1]

The highest proportion of workers with hourly earnings at or below $3.35 per hour was found among those with the fewest years of schooling completed. In fact, 10 percent of *all* workers aged *25 and over* with only 8 years of education earned $3.35 per hour. Altogether, workers who had not completed high school accounted for almost 40% of all minimum wage workers. So you can see that youth and low-levels of education have a dramatic impact on the likelihood of earning the minimum wage.[2]

Another factor that has a bearing on the likelihood of earning the minimum wage is full-time work versus part-time work. Part-time workers are six times as likely to earn the minimum wage than are their full-time counterparts.

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[1] Mellor, Earl F., "Workers at the minimum wage or less: who they are and the jobs they hold." Monthly Labor Review, July 1987, pp. 34-38.

[2] Smith, Ralph E. and Vavrichek, Bruce, "The minimum wage: its relation to incomes and poverty", Monthly Labor Review, June 1987, pp. 24-30.

THE MINIMUM WAGE AND POVERTY

How likely are minimum wage workers to be poor? This is a critical question since one of the principal reason for increasing the minimum wage is to lift minimum wage workers out of poverty. Ralph Smith and Bruce Vavrichek of the Congressional Budget Office have written that slightly over four-fifths of those receiving the minimum wage are not poor. Eighteen point five percent of minimum wage workers *are* poor, but there are many more poor individuals who do *not* work. (Ibid.)

Data from 1985 show that about 1 million minimum wage workers were from poor families. Of those 1 million workers, only 12 percent had worked full-time, year round. Seventy three percent worked part-time, part year or both. The remaining 15 percent did not report any paid employment in the previous year.

The presence or absence of other members of the household who work also affects the likelihood of being poor. In fact, among minimum wage earners who were the *only* job holders in their household, the poverty rate was 44.5 percent. Finally, family size has a great impact on the likelihood that a minimum wage earner will be poor. A single earner is much better off than a earner with two, three or four dependents.

Thus, although the poverty rate among full-time, year round workers employed at the minimum wage was nearly 13 percent, there were approximately 120,000 poor workers in this situation. All of this tells us that the minimum wage is a very blunt instrument for helping the poor rise out of poverty. It will do some good, but it is also likely to harm the low-skilled entry-level worker.

The Senate recently concluded consideration of the Welfare Reform Act. It is a significant piece of legislation because it shows that the Congress is beginning to recognize that welfare recipients must be strongly encouraged to work and become self-sufficient. This is also the stated objective of a minimum wage increases. As S. 837 is debated, arguments will turn on the declining purchasing power of the minimum wage and the need to support a family, as reason to support a change in the legal rate.

THE CUMULATIVE IMPACT OF MANDATED BENEFITS

Liberal and conservative economists agree that mandatory increases in labor costs will eliminate jobs in our economy. The arguments between economists have to do with the magnitude of job loss, not whether there will be job loss. One thing we do know is who those workers are who are most at risk of losing their jobs. They are the low-skilled, part-time, young workers. If it sounds like minimum wage workers to you, that's because it is.

In fact, the Congressional Budget Office has estimated that an increase in the minimum wage "from $3.35 to $4.65 . . . would result in lost jobs for about 400,000 teens. . . . [T]he separate effect of the minimum health insurance provision might be in the neighborhood of 100,000 jobs. It is even more difficult to pinpoint the impact of the combined provisions, since there might be some interactions, but its order of magnitude under this methodology is prob-

ably around 500,000." [3] A similar report on the job-loss effect of the minimum wage alone was supressed by the House Education and Labor Committee. It is easy to understand why the leadership of the House Committee wanted CBO to change its report. The information on job loss, when considered with the likely increase in inflation, shows that the minimum wage increase would hurt the working poor more than any other class of worker.

In February 1987, I offered a resolution in Committee having to do with assessing the employment and competitiveness impact of mandated benefits. At that time I said that we should look at the cumulative impact of the mandated benefits that the Chairman was proposing. But it was recognized that the result would have not been a happy one. The resolution was tabled without discussion. The Fourth Century B.C. Greek poet Sophocles, said in his famous play *Antigone* said "None love the messenger who brings bad news." Words of wisdom are timeless. The bad news of the impact that mandated benefits have on low-skilled and entry-level workers is unwanted by the sponsors and supporters of these initiatives.

S. 837 was reported out of Committee in June 1988, and although the Chairman has had the votes to report this bill since January 1987, we have held up out of respect for the Presidential elections. The mandated health benefits bill, S. 1265 has been reported out of Committee. The minimum wage bill has now been reported. Soon the "parental leave" bill will be reported out of Committee. Members of this Committee seldom question the impact of mandated benefits on employment. I suspect it is less a matter of concern for them than it is for me. However, I was pleased to note that this concern was echoed by Senators Adams, Mikulski and Pell in their additional views on S. 1265, the Chairman's mandatory health insurance bill. While the authors reaffirm their commitment to the "underlying objective" of the bill, they also say, and I quote:

> Although we stand committed to the concepts which underline the Act, we have concerns about the cumulative impact which this bill, and others currently under consideration by the Committee on Labor and Human Resources, may have on small businesses if not appropriately phased in and calibrated. In the near future, the Committee will consider bills aimed at increasing the minimum wage and entitling workers to unpaid family and medical leave. Although we will be called upon to consider each of these bills separately, our concern is for their cumulative effect. In our view, it is impossible to pass any one of these measures without considering what has been or may be done with respect to others.[4]

Mandated benefits and mandated wage increases are not free. They cost money to employers and they cost jobs to low-skilled and

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[3] Proposed Amendments to the Public Health Service Act and the Fair Labor Standardds Act of 1938: Hearings on S. 1265 before the Committee on Labor and Human Resources, S. Hrg. 100-376, Pt. 2, (1987) page 89.

[4] From page 64 of S. Rep. No. 100-360. Additional views of Senators Adams, Mikulski and Pell.

entry-level workers. We cannot continue to ignore this important fact.

JOB PRESERVATION AND JOB GROWTH

On June 6, 1988, the *Washington Post* published an editorial discussing the unemployment rate which in June bumped back to 5.6 percent from 5.4 percent. Up front the *Post* said that this was "A Soothing Number" because it meant that the economy is healthy and strong and not subject to fueling inflation.

But the bulk of the editorial discussed our unusual capacity to create new jobs. The *Post* said that the "Europeans profess astonishment at the American success in keeping employment expanding—38 million jobs over the past 20 years, a 50 percent increase despite oil crises, recessions, inflation and high interest rates." The *Post* then went on to say, "The unemployment rate in Western Europe is nearly twice as high as here. Why?"

The two reasons given by the *Post* are interesting, but not surprising. The first reason has to do with tight money policy, but the second reason for chronically high unemployment is pertinent to the legislation pending before the Committee. It is, what the *Post* calls "extreme rigidity" of the European labor market. Let me go on to quote this editorial because it is instructive.

> It is difficult for an employer to fire or lay off people; powerful legislation sees to that . . . [I]t makes employers very wary about hiring. The paradox is that beyond a point that Europe long since passed, *laws to protect jobs result in high unemployment.* That's part of the equation that the European left prefers not to discuss. Here in the freewheeling United States, the law doesn't do much *to preserve jobs for the people who have them, with the result that people who don't have them are more likely to find them.* [Emphasis added.] [5]

Tell the *Post* to stop the presses. We, too, can have "extreme rigidity" in our labor market, and we are walking down that road if we do not scrutinize our proposed mandated benefits most carefully. Though the Committee may not like the bad news on jobs that these bills foreshadow, it is, nevertheless something that should be known to all. Otherwise, to report out these bills to the full Senate we will be like the blind leading the blind. One will stumble and all will follow the leader's fate.

THE PROBLEM OF PUERTO RICO

In a manner somewhat amphibious, S. 837 both covers the Commonwealth of Puerto Rico under mainland minimum wage laws and permits them to establish "special industry committees" to exempt certain industries from the minimum wage and set wages lower than those established by this bill. The Committee report states that the disparate treatment of Puerto Rico is justified on two points. First, the report of the majority states that Puerto Rico has historically had a very high rate of unemployment and high

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[5] The Washington Post, June 6, 1988, "A Soothing Number", page A 14.

minimum wages will hurt entry-level and marginal workers in the Commonwealth. I agree. At the same time, I wonder whether this means that south Chicago, Watts and parts of New York City need a subminimum wage because economic conditions are poor and unemployment is high and traditionally and historically has been.

Second, the report of the majority states that workers in the Commonwealth of Puerto Rico are covered by a number of mandated benefits including: (1) mandatory annual bonuses, (2) mandatory disability benefits, (3) mandatory paid annual leave, (4) mandatory paid sick leave, (5) mandatory paid annual leave, (6) mandatory overtime payments at double time rates for any work over 8 hours per day or 40 hours per week, and (7) mandatory severance pay. While the report of the majority merely refers to "Puerto Rico's unique economic circumstances", it is very clear that they believe Puerto Rico mandated benefits in combination with high minimum wages will produce adverse economic circumstances for those minimum wage workers.

I wholeheartedly agree and urge my colleagues to examine the bittersweet ironies of the Puerto Rican problem before casting votes for higher minimum wages or mandated benefits or especially, both.

A CONSTRUCTIVE ALTERNATIVE

The *real* argument should be over the best solution to the problems faced by the working poor. Economic need varies by size of family, but wages do not. So we face a problem both in getting AFDC mothers off welfare and into jobs and/or in providing incentives for the working poor to *continue* working and to strive for independence.

Earlier in my statement I pointed to some of the characteristics of poor minimum wage workers, e.g., they may be young, with little formal education, little attachment to the workforce on a full-time basis and they may have one or more dependents. Those variables, particularly having children, can make a minimum wage worker's attachment to the labor force tenuous.

One major reason why welfare recipients lack incentive to work is the low level of wages they could expect to earn from jobs that are available to them. With little education and not much in the way of experience such individuals could only expect to obtain the lowest wage jobs with little or no fringe benefits—jobs that would not lift those families out of poverty.

The ideal way to help those single heads of households to lift themselves out of poverty is through education, training and on-the-job work experience. However, as an incentive to staying in the workforce, Congress could expand the earned income tax credit to supplement a head of household's income according to the number of dependents. This would offer a practical solution to adjust the earnings of low-income workers to reflect differences in family financial responsibilities.

A modest increase in the minimum wage is appropriate for dealing with the problems of the working poor. The current EITC framework is well-suited to this task. It is already somewhat related to need since you must have one child to qualify. You must

work and have a low income. In addition, it is refundable, and can be charged against a tax liability. Indeed, it can be done in combination with a modest increase in the minimum wage. These two elements, if passed along with measures to assist youth who are likely to lose jobs due to the wage increase, would be a much more targeted way of assisting those who need help. Without a training wage for teens, increasing the minimum wage could severely curtail the future earning power of today's teenagers, the next generation of adult workers. Teens who lack the opportunity to acquire an employment history may end up as tomorrow's disadvantaged workers.[6]

DAN QUAYLE.

[6] The Urban Institute/Policy and Research Report, Summer 1988, Vol. 18, No. 2, "Increasing The Minimum Wage: A Risky Way to Reduce Poverty", based on the draft report "Minimum Wage Increases and the Working Poor" By Ronald B. Mincy, May 1988.

MINORITY VIEWS

We believe that an increase in the minimum wage, despite the good intentions of the bill's sponsors, is an ineffective means of helping the working poor in our society. In fact, it has the actual effect of benefitting those in the workforce who are least dependent on the minimum wage at the expense of jobs for the unskilled. Moreover, the bill does nothing to address the lack of basic skills or work experience as the root causes of unemployability or of prolonged employment in low wage jobs.

JOB LOSSES

While estimates vary, the economic opinion is nearly unanimous that an increase in the minimum wage will result in disemployment. The term "disemployment" includes not only those existing jobs which might be eliminated, but also those jobs which will not materialize in the future. A car wash business for example, which had planned to open another outlet during the next year, may forego expansion given automatic labor cost increases for the next three years resulting from a mandatory increase in the minimum wage.

According to the labor Department, one commonly accepted formula for estimating the disemployment effect is that a 10 percent increases in the minimum wage will result in the loss of 100,000 to 200,000 jobs. This means that an increase to $4.55 by 1991 would cost 360,000 to 720,000 jobs. This figure is consistent with an estimate by the Institute for Research on the Economics of Taxation that 300,000 to 750,000 jobs would be lost under the original version of S. 837, as well as with research conducted for the Minimum Wage Study Commission that a 10 percent increase in the minimum wage results in a one to three percent reduction in teenage employment. [Brown, Gilroy and Kohen, 1981; Brown, 1987] A more conservative estimate of disemployment effect presented to the Labor and Human Resources Committee by Dr. Gerald Adams of the Wharton School was that 200,000 jobs could be lost given the provisions of S. 837 as introduced.

It is important to note that any increasae in the minimum wage will have this disemployment effect. The minor reduction in the proposed top rate from $4.65 to $4.55, which would take effect in 1991 under the bill, still represents an increase of 36 percent over the three-year period. This so-callled compromise on the minimum wage rate will improve the job loss estimate only slightly from the 39 percent increase advocated in the original bill.

The Labor Department has also estimated the job loss at various levels of increase. At $4.35 per hour, the loss is estimated to be between 300,000 and 600,000 jobs; at $4.00 per hour, between 200,000 and 400,000 jobs will be lost.

How and why do these jobs disappear? It is a fundamental economic concept that, as the price of any good or service increases, less of it will be purchased. The assertion made in the majority report that the demand for labor does not respond to changes in price is simply inconsistent with every accepted principle of economics. The demand for labor is no different than the demand for personal computers, restaurant meals, automobiles, or any other elastic good or service. The fact is that the additional 40 cents per hour, or $120 per hour in three years, has to come from somewhere. To compensate for a mandatory increase in the price of labor, employers will find less costly substitutes for low-skilled workers such as machines, will cut back on the number or quality of customer services, reduce employees' work hours, raise prices, or some combination of all four responses. If an employer cannot make these adjustments, which may be the case in some small businesses, the business is likely to fail.

TRAINING WAGE

Some have argued that America's demographic changes, e.g., an overall reduction in the teenage population, will offset these future job losses. Proponents of the bill reason that it will not hurt to lose several hundred thousand jobs if there are not people to fill them. In so doing, they are agreeing to eliminate entry level jobs which are vital stepping stones for unskilled or inexperienced workers, jobs which provide both earning and learning opportunities for those who cannot compete for jobs at higher wage levels and who need these opportunities the most.

The disemployment effect of previous increases in the minimum wage was minimized because workers who could not compete at the higher wage level were able to obtain jobs in industries not covered by the Fair Labor Standards Act. Today, nearly every sector of our economy is covered and there are few havens of opportunity for low-skilled workers.

Not only does S. 837 exacerbate the labor force vulnerability for the illiterate, unskilled, or inexprienced in our society, it contains no provision to mitigate the inevitable adverse effects. If S. 837 is to be enacted into law, it should provide for a substantive, workable training wage. A wage differential will not altogether prevent the loss of jobs, but it will at least build some equity into a federally mandated wage floor. We cannot simply write off hundreds of thousands of jobs without acknowledging whose jobs we are giving up.

REGIONAL IMPACT

The majority also cites the testimony of Dr. Adams in stating that the impact on individuals of a minimum wage increase is dependent on the gap between the statutory minimum and the average wage. If, for example, the average wage were $12 per hour, the effect of increasing the minimum would be less than if the average wage were only $10 per hour. To support its claim that the minimum wage hike will result in negligible job losses and costs due to the ripple effect, the majority report stresses that the current minimum is only 36 percent of the average wage.

The majority has overlooked the fact, however, that many states and regions in our nation have lower average wages, yet they would be forced to implement the same national wage standard. States, particularly in the southern and midwestern parts of our country, which are struggling to attract new business and industry would immediately be placed at a competitive disadvantage relative to those states with higher wage bases. If the majority is correct, then the workers of Connecticut or Massachusetts will suffer little, but opportunities in Mississippi or Utah will dry up.

A 1987 study for the National Chamber Foundation, conducted by Professors Richard McKenzie and Curtis Simon of Clemson University, which projects job losses by state and region indicates that nearly 1.9 million jobs would be lost by 1995 under the original provisions of S. 837. The South would absorb a full third of these losses, or 634,927 jobs. The Midwest would lose 445,730 jobs, or 23 percent of the projected total losses.

These findings are consistent with a recent study done by Professor Ronald Krumm of the University of Chicago. He found that, overall, congressional districts in and bordering the deep South would be affected most by a minimum wage increase.

NO EFFECT ON POVERTY

The rationale for supporting an increase in the minimum wage has been the desire to upgrade the living standard for the working poor. Certainly this is a worthy goal. If we believed that S. 837 could accomplish it, we would vote for the legislation. The facts, however, do not support the assertion that a minimum wage increase will lift out of poverty the people proponents ostensibly want to help.

First, the number of minimum wage earners, 4.7 million in 1987, has declined by 40 percent since 1981. This fact is contrary to the prediction of the Minimum Wage Study Commission, made in 1981, that the number of minimum wage earners would exceed 13 million by 1990. Significantly, this decline shows that 1) Americans are not "stuck" in minimum wage jobs and 2) the 16 million new jobs created during the economic recovery of the 1980s are not minimum wage jobs.

Second, of these 4.7 million minimum wage earners, only 20 percent are below poverty, and just 14 percent, or 658,000, are actually heads of households with dependent relatives. A vast majority of minimum wage earners, 72 percent, are spouses, children, or relatives of the head of household. Seventy percent of all minimum wage earners live in families with incomes of 150 percent of poverty or greater. Clearly, the target group is well-defined. The minimum wage increase, however, will apply to *all* minimum wage workers whether or not they are poor. The idea of helping the working poor by increasing the minimum wage across-the-board is like shooting into the woods hoping to hit a rabbit. A teenager from a middle or upper class family is more likely to be helped then the immigrant father who lacks English language skills or the single mother who never finished high school.

The danger to minimum wage workers of an increase in the minimum wage is quite simply that they will be priced out of the

market. Employers can justify higher wages only if productivity and skill levels increase. It stands to reason, for example, that if government were to set a $10 per person floor on the price of restaurant meals, consumers would expect more than a hamburger in a plastic wrapper. Fast food restaurants would be priced out of the market since few people would pay that price to eat at one. If the minimum price for labor is $4.55 an hour, employers will require a higher skill level—skills that minimum wage workers do not have or cannot obtain overnight. Minimum wage workers who are heads of household are often the least able to compete for jobs at higher wage and skill levels. One-half of the heads of household living in poverty do not even have a high school diploma. Raising the minimum wage will not provide them with one.

INFLATION

While debate remains over the precise impact of the minimum wage increase on inflation, there is general agreement that the impact is postivie.

Dr. Gerard Adams testified that the minimum wage increase proposed in S. 837 would have "only moderate effects, up to .2 percent annually". Dr. Beryl W. Sprinkel, Chairman of the Council of Economic Advisors, has projected that a minimum wage increase to $4.65 per hour could result in price increases for consumers amounting to approximately $13 billion.

For example, labor costs account for 60 percent of all nursing home expenses. These costs are covered through patient out-of-pocket payments (30%), Medicare and Medicaid (68%), insurance (1%), and other government agencies such as the Veterans' Administration (1%). Nursing homes also employ a substantial number of support personnel who may earn more than the current minimum wage, but less than $4.55. In this industry, if this legislation is enacted, it is reasonable to expect significant cost increases, costs which would have to be met largely through increased appropriations for federal and state Medicaid programs.

ALTERNATIVE APPROACHES

We believe that all Americans should have access to educational and job training opportunities which will enhance their earning power. Programs such as the Job Training Partnership Act (JTPA) and the Carl Perkins Vocational Education Act are only two of hundreds of federal, state, local, and private sector efforts to provide such opportunities. These programs should continue to receive support and emphasis.

Additionally, we believe new ideas should be examined. We should not let ourselves be trapped into seeking out only the usual solutions. We propose a more thorough study of the "Job Enhancement for Families Act," a proposal to restructure the Earned Income Tax Credit (EITC). An expansion of this refundable tax credit has several attractive features: 1) It would more carefully focus benefits directly on those families who need them; 2) It would increase the after-tax income of poor families without jeopardizing their jobs; and 3) The Council of Economic Advisors has estimated that the cost to the Treasury of a minimum wage increase to $4.65

per hour would be approximately $1.8 billion, $1 billion in lost revenues and $800 million indirect outlays. The estimated cost of expanding the EITC is about $1.5 billion.

CONCLUSION

Since enactment of the Fair Labor Standards Act Amendments of 1977, which created the Minimum Wage Study Commission (MWSC), the minimum wage has received considerably more attention as a topic of economic research. The evidence which has accumulated since then has borne out earlier conclusions by University of Chicago Professor and Nobel Laureate George Stigler [1946], Finis Welch of UCLA [1971; 1973; 1975], Columbia's Jacob Mincer [1976], Thomas Moore of Michigan State [1971], and Yale Brozen of the University of Chicago [1969], to name just a few. These conclusions have been that the minimum wage, by raising the relative price of labor, reduces employment opportunities, particularly for unskilled and inexperienced workers.

Recently, the research has also focused on the efficacy of the minimum wage as an anti-poverty tool. Again, the conclusion of a wide range of economists is that the minimum wage is ineffective as a means of redistributing income and assisting the poor.

It is time Congress recognized the negative impacts of the minimum wage to the economy in general as well as the risks to those workers we all want to help. We must consider, instead, new ideas and proposals to provide long-term, permanent hope and opportunity for the working poor; Congress cannot grant these simply by passing a law increasing the minimum wage.

ORRIN G. HATCH.
THAD COCHRAN.
DAN QUAYLE.
STROM THURMOND.
GORDON HUMPHREY.

XI. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change in proposed is shown in roman):

FAIR LABOR STANDARDS ACT

(29 U.S.C.—Chapter 8)

* * * * * * *

§ 203. Definitions

As used in this chapter—

(a)-(r) * * *

(s) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or ma-

terials that have been moved in or produced for commerce by any person, and which—

(1) during the period February 1, 1967, through January 31, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a gasoline service establishment whose annual gross volume of sales is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969, is an enterprise, other than an enterprise which is comprised exclusively of retail or service establishments and which is described in paragraph (2), whose annual gross volume of sales made or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated);

[(2) is an enterprise which is comprised exclusively of one or more retail or service establishments, as defined in section 213(a)(2) of this title, and whose annual gross volume of sales made or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), beginning July 1, 1978, whose annual gross volume of sales made or business done is not less than $275,000 (exclusive of excise taxes at the retail level which are separately stated), beginning July 1, 1980, whose annual gross volume of sales made of business done is not less than $325,000 (exclusive of excise taxes at the retail level which are separately stated), and after December 31, 1981, whose annual gross volume of sales made of business done is not less than $362,500 (exclusive of excise taxes at the retail level which are separately stated);]

(2) is an enterprise that is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);

(3) is engaged in laundering, cleaning, or repairing clothing or fabrics;

(4) is engaged in the business of construction or reconstruction, or both;

(5) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(6) is an activity of a public agency.

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose

of this subsection. The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

Notwithstanding paragraph (2), an enterprise which is comprised of one or more retail or service establishments, which on [June 30, 1978] *December 31, 1988*, was subject to section 206(a)(1) of this title, and which because of a change in the dollar volume standard in such paragraph prescribed by the [Fair Labor Standards Amendments of 1977] *Minimum Wage Restoration Act of 1988* is not subject to such section, shall, if its annual gross volume of sales made or business done is not less than [$250,000] *$362,500* (exclusive of excise taxes at the retail level which are separately stated), pay its employees not less than the minimum wage in effect under such section on the day before such change takes effect and shall pay its employees in accordance with section 207 of this title. A violation of the preceding sentence shall be considered a violation of section 206 or 207 of this title, as the case may be.

§ 205. Special industry committees for Puerto Rico [and the Virgin Islands]

(a) ESTABLISHMENT; RESIDENTS AS MEMBERS OF COMMITTEES.—[The Administrator shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 206 of this title to employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce or the Administrator may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under said section to employees therein engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the Untied States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees shall be subject to the provisions of section 208 of this title.]

(a) The Secretary, on petition by the Minimum Wage Board of Puerto Rico, shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico on a determination that—

(1) there exists a significant and substantial difference between the wage structure of an industry in Puerto Rico, and the prevailing wage structure of that industry on the mainland;

(2) there is reasonable cause to believe that the full application of the rate or rates provided by section 6(a)(1) would substantially curtail employment; and

(3) notice of the petition of the Minimum Wage Board of Puerto Rico has been given to all interested parties and to the public in Puerto Rico.

* * * * * * *

(e) APPLICATION OF SECTIONS 206 AND 208 TO EMPLOYEES IN PUERTO RICO [OR THE VIRGIN ISLANDS].—The provisions of this section, section 206(c) of this title, and section 208 of this title shall not apply with respect to the minimum wage rate of any employee employed in Puerto Rico [or the Virgin Islands] (1) by the United States [or by the government of the Virgin Islands] (2) by an establishment which is a hotel, motel, or restaurant, or (3) by any other retail or service establishment which employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs. The minimum wage rate of such an employee shall be determined under this chapter in the same manner as the minimum wage rate for employees employed in a State of the United States is determined under this chapter. As used in the preceding sentence, the term "State" does not include a territory or possession of the United States.

* * * * * * *

§ 206. Minimum wage

(a) EMPLOYEES ENGAGED IN COMMERCE; HOME WORKERS IN PUERTO RICO [AND VIRGIN ISLANDS]; EMPLOYEES IN AMERICAN SAMOA; SEAMEN ON AMERICAN VESSELS; AGRICULTURAL EMPLOYEES.—Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

[(1) not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.90 an hour during the year beginning January 1, 1979, not less than $3.10 an hour during the year beginning January 1, 1980, and not less than $3.35 an hour after December 31, 1980, except as otherwise provided in this section:]

(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending December 31, 1988, not less than $3.75 an hour during the year beginning January 1, 1989, not less than $4.15 an hour during the year beginning January 1, 1990, and not less than $4.55 an hour after December 31, 1990;

(2) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer

which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;

(3) if such employee is employed in American Samoa, in lieu of the rate or rates provided by this subsection or subsection (b) of this section, not less than the applicable rate established by the Secretary of Labor in accordance with recommendations of a special industry committee or committees which he shall appoint in the same manner and pursuant to the same provisions as are applicable to the special industry committees provided for Puerto Rico [and the Virgin Islands] by this chapter as amended from time to time. Each such committee shall have the same powers and duties and shall apply the same standards with respect to the application of the provisions of this chapter to employees employed in American Samoa as pertain to special industry committees established under section 205 of this title with respect to employees employed in Puerto Rico [or the Virgin Islands]. The minimum wage rate thus established shall not exceed the rate prescribed in paragraph (1) of this subsection;

(4) if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

(5) if such employee is employed in agriculture, not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977.

* * * * * * *

(c) WAGE RATES SUPERSEDED BY RECOMMENDATION OF SPECIAL INDUSTRY COMMITTEE.—[(1) The rate or rates provided by subsection (a)(1) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands only for so long as and insofar as such employee is covered by a wage order (A) heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 205 of this title, and (B) which prescribes a wage order rate which is less than the wage rate in effect under subsection (a)(1) of this section.

[(2)(A) Each wage order rate under a wage order described in paragraph (1) which on December 31, 1977, is at least $2 an hour shall, except as provided in paragraph (3), be increased—

[(i) effective January 1, 1978, by $0.25 an hour or by such greater amount as may be recommended by a special industry committee under section 208 of this title, and

[(ii) effective January 1, 1979, and January 1 of each succeeding year, by $0.30 an hour or by such greater amount as may be so recommended by such a special industry committee.

[(B) Each wage order rate under a wage order described in paragraph (1) which on December 31, 1977, is less than $2 an hour shall, except as provided in paragraph (3), be increased—

[(i) effective January 1, 1978, by $0.20 an hour or by such greater amount as may be recommended by a special industry committee under section 208 of this title, and

[(ii) effective January 1, 1979, and January 1, of each succeeding year—

[(I) until such wage order rate is not less than $2.30 an hour, by $0.25 an hour or by such greater amount as may be so recommended by a special industry committee, and

[(II) if such wage order rate is not less than $2.30 an hour, by $0.30 an hour or by such greater amount as may be so recommended by a special industry committee.

[(C) In the case of any employee in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 205 of this title, to whom the rate or rates prescribed by subsection (a)(5) of this section would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the applicable increases prescribed by subparagraph (A) or (B) shall be applied to the sum of the wage rate in effect under such wage order and the amount by which the employee's hourly wage is increased by the subsidy (or income supplement) above the wage rate in effect under such wage order.

[(3) If the wage rate of an employee is to be increased under this subsection to a wage rate which equals or is greater than the wage rate under subsection (a)(1) of this subsection, which, but for paragraph (1) of this subsection, would be applicable to such employee, this subsection shall be inapplicable to such employee and the applicable rate under subsection (a)(1) of this section shall apply to such employee.

[(4) Each minimum wage rate prescribed by or under paragraph (2) shall be in effect unless such minimum wage rate has been superseded by a wage order (issued by the Secretary pursuant to the

recommendation of a special industry committee convened under section 208 of this title) fixing a higher minimum wage rate.]

(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico, except that, subject to the exceptional circumstances specified in section 5(a) and to paragraph (2), such rate or rates may be superseded only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee, that prescribes a wage order rate that is less than the wage rate in effect under subsection (a)(1).

(2) In the case of any employee in Puerto Rico, no wage order issued by the Secretary pursuant to paragraph (1) shall prescribe a rate that is less than $3.35 an hour.

* * * * * * *

§ 208. Wage orders in Puerto Rico [and the Virgin Islands]

(a) CONGRESSIONAL POLICY; RECOMMENDATION OF WAGE RATE BY INDUSTRY COMMITTEE.—The policy of this chapter with respect to industries or enterprises in Puerto Rico [and the Virgin Islands] engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 206(a) of this title but for section 206(c) of this title. The Secretary shall, from time to time, convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry [committee—

[(1) shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico, in the Virgin Islands, or in both places and who but for section 206(c) of this title would be subject to the minimum wage requirements of section 206(a)(1) of this title, and

[(2) may, from time to time, recommend increases in the incremental increases authorized by section 206(c)(2) of this title.] *committee shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a)(1).* The Administrator shall from time to time convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee shall from time to time recommend the minumum rate or rates of wages to be paid under section 206 of this title by employers in Puerto Rico [or the Virgin Island, or in Puerto Rico and the Virgin Islands,] engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in production of goods for commerce in any such industry or classifications therein. Minimum rates of wages established in accordance with this section which are not equal to the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 206(a) of this title shall be reviewed by such a committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary, in his discre-

tion, may order an additional review during any such biennial period.

(b) INVESTIGATION OF INDUSTRY CONDITION BY INDUSTRY COMMITTEE; MATTERS CONSIDERED.—Upon the convening of any such industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this chapter. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico [or in the Virgin Islands] a competitive advantage over any industry in the United States outside of Puerto Rico [and the Virgin Islands]; except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 206(a) or 206(b) of this title, which would be applicable but for section 206(c) of this title, unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage.

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§ 214. Employment under special certificates

(a) LEARNERS, APPRENTICES, MESSENGERS.—The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

(b) STUDENTS.—(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico [or the Virgin Islands] not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206(c) of this title), of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service

establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this chapter before the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater;

(ii) in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments,

(II) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater; or

(iii) in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in (I) similar establishments of the same employer in the same general metropolitan area in which such establishment is located, (II) similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or (iii) other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term "student hours of employment" means hours during which

students are employed in a retail or service establishment under certificates issued under this subsection.

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(a)(5) of this title or not less than $1.30 an hour, whichever is the higher (or in the case of employment in Puerto Rico [or the Virgin Islands] not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(c) of this title), of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico [or the Virgin Islands] not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(c) of this title), of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

(4)(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

(B) If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed six, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed six—

(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

(ii) in the case of an employer which is a retail or service establishment subparagraph (B) of paragraph (1) shall not apply

with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate.

(D) To minimize paperwork for, and to encourage, small businesses to employ students under special certificates issued under paragraphs (1) and (2), the Secretary shall, by regulation or order, prescribe a simplified application form to be used by employers in applying for such a certificate for the employment of not more than six full-time students. Such an application shall require only—

(i) a listing of the name, address, and business of the applicant employer.

(ii) a listing of the date the applicant began business, and

(iii) the certification that the employment of such full-time students will not reduce the full-time employment opportunities of persons other than persons employed under special certificates.

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